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Table of Contents

Agency/Action/Subject Index iii
Rules Affected Index vi
Agency Index (Title numbers assigned) xlvii

Notices of Rulemaking Intent
Environmental Quality, Department of (Title 252) 2031

Submissions for Review
Public Safety, Department of (Title 595) 2035
University Hospitals Trust (Title 753) 2036

Gubernatorial Approvals
Accountancy Board, Oklahoma (Title 10) 2037
Alcohol and Drug Counselors, Oklahoma Board of (Title 38) 2037, 2038
Attorney General (Title 75) 2038
Chiropractic Examiners, Board of (Title 140) 2039
Consumer Credit, Department of (Title 160) 2039, 2040
Corporation Commission (Title 165) 2040, 2041
Corrections, Department of (Title 170) 2042
Health, Oklahoma State Department of (Title 310) 2042, 2043, 2044, 2045
Health Care Authority, Oklahoma (Title 317) 2045, 2046, 2047, 2048, 2049, 2050
Horse Racing Commission, Oklahoma (Title 325) 2050, 2051, 2052, 2053
Housing Finance Agency, Oklahoma (Title 330) 2054
Human Services, Department of (Title 340) 2054, 2055
Insurance Department (Title 365) 2056, 2057
Juvenile Affairs, Office of (Title 377) 2057, 2058
Mines, Department of (Title 460) 2058, 2059
Regents for Higher Education, State (Title 610) 2059
Tax Commission, Oklahoma (Title 710) 2059, 2060, 2061, 2062
Treasurer, State (Title 735) 2063
Used Motor Vehicle and Parts Commission, Oklahoma (Title 765) 2063, 2064, 2065

Withdrawn Rules
Consumer Credit, Department of (Title 160) 2067
Public Safety, Department of (Title 595) 2067

Emergency Adoptions
Horse Racing Commission, Oklahoma (Title 325) 2069, 2070, 2071, 2079, 2089, 2116
Public Employees Relations Board (Title 585) 2120

Permanent Final Adoptions
Accountancy Board, Oklahoma (Title 10) 2123
Agriculture, Food, and Forestry, Oklahoma Department of (Title 35) 2135, 2141, 2143, 2144, 2152, 2153, 2155, 2157, 2164, 2166, 2167, 2168, 2171, 2172
Alcohol and Drug Counselors, Oklahoma Board of (Title 38) 2174, 2177
Attorney General (Title 75) 2189, 2200
Corporation Commission (Title 165) 2225, 2229, 2260, 2297, 2325
Health, Oklahoma State Department of (Title 310) 2345, 2346, 2353, 2357, 2358, 2359, 2363, 2367, 2374, 2380, 2386, 2404, 2412, 2415, 2422
Health Care Authority, Oklahoma (Title 317) 2428, 2430, 2440, 2460, 2461, 2463, 2477, 2487, 2489, 2500, 2508, 2537, 2540, 2554, 2555, 2557, 2562, 2566, 2571, 2572, 2575, 2580, 2583, 2586, 2590
Horse Racing Commission, Oklahoma (Title 325) 2592, 2593, 2594, 2602, 2613, 2640
Human Services, Department of (Title 340) 2644, 2648, 2661, 2662, 2665, 2668
Insurance Department (Title 365) 2669, 2672, 2730, 2735, 2738, 2758
Juvenile Affairs, Office of (Title 377) 2758, 2761, 2764, 2767, 2769, 2770
Labor, Department of (Title 380) 2771
Lottery Commission, Oklahoma (Title 429) 2774, 2778, 2783, 2791
Osteopathic Examiners, State Board of (Title 510) 2798
Police Pension and Retirement System, Oklahoma (Title 550) 2798, 2799, 2801

Tax Commission, Oklahoma (Title 710) 2802, 2803, 2813, 2814, 2815, 2816, 2824, 2836, 2837, 2847, 2866, 2867, 2870, 2874
Transportation, Department of (Title 730) 2879
Used Motor Vehicle and Parts Commission, Oklahoma (Title 765) 2881, 2883, 2884, 2886, 2887, 2889, 2891, 2893, 2896, 2897, 2898, 2899
Career and Technology Education, Oklahoma Department of (Title 780) 2901, 2904, 2911
Executive Orders (Title 1) 2923

Agency/Action/Subject Index

ACCOUNTANCY Board, Oklahoma (Title 10)
Gubernatorial Approvals
Administrative Operations (Chapter 1) 2037
Licensure and Regulation of Accountancy (Chapter 15) 2037
Permanent Final Adoptions
Administrative Operations (Chapter 1) 2123
Licensure and Regulation of Accountancy (Chapter 15) 2123

AGRICULTURE, Food, and Forestry, Oklahoma Department of (Title 35)
Permanent Final Adoptions
Administrative Operations (Chapter 1) 2135
Fine Matrices (Chapter 3) 2141
Fuel Alcohol (Chapter 13) 2143
Animal Industry (Chapter 15) 2144, 2152, 2153, 2155, 2157, 2164
Forestry (Chapter 20) 2166
Plant Industry (Chapter 30) 2167, 2168, 2171
Food Safety (Chapter 37) 2172

ALCOHOL and Drug Counselors, Oklahoma Board of (Title 38)
Gubernatorial Approvals
Administration (Chapter 1) 2037
Licensure and Certification of Alcohol and Drug Counselors (Chapter 10) 2038
Permanent Final Adoptions
Administration (Chapter 1) 2174
Licensure and Certification of Alcohol and Drug Counselors (Chapter 10) 2177

ATTORNEY General (Title 75)
Gubernatorial Approvals
Administration (Chapter 1) 2038
Standards and Criteria for Domestic Violence, ~~and~~ Sexual Assault and Batterers Intervention Programs (Chapter 15) 2038
Permanent Final Adoptions
Administration (Chapter 1) 2189
Standards and Criteria for Domestic Violence, ~~and~~ Sexual Assault and Batterers Intervention Programs (Chapter 15) 2200

CHIROPRACTIC Examiners, Board of (Title 140)
Gubernatorial Approvals
Administrative Organization and Operations (Chapter 1) 2039
Disciplinary Procedures (Chapter 3) 2039
Licensure of Chiropractic Physicians (Chapter 10) 2039
Special Certificates and Miscellaneous Provisions (Chapter 15) 2039

CONSUMER Credit, Department of (Title 160)
Gubernatorial Approvals
Consumer Leasing (Chapter 10) 2039
Truth in Lending Rules (Chapter 45) 2039
Mortgage Brokers (Chapter 55) 2040
Precious Metal and Gem Dealers (Chapter 60) 2040
Deferred Deposit Lenders (Chapter 70) 2040
Withdrawn Rules
Uniform Consumer Credit Code Rules (Chapter 25) 2067

CORPORATION Commission (Title 165)
Gubernatorial Approvals
Rules of Practice (Chapter 5) 2040
Oil and Gas Conservation (Chapter 10) 2041
Fuel Inspection (Chapter 15) 2041
Underground Storage Tanks (Chapter 25) 2041
Aboveground Storage Tanks (Chapter 26) 2041

CORPORATION Commission – *continued*
Gubernatorial Approvals – continued
Indemnity Fund (Chapter 27) 2041
Motor Carriers (Chapter 30) 2041
Permanent Final Adoptions
Rules of Practice (Chapter 5) 2225
Oil and Gas Conservation (Chapter 10) 2229
Underground Storage Rules (Chapter 25) 2260
Aboveground Storage Tanks (Chapter 26) 2297
Motor Carriers (Chapter 30) 2325

CORRECTIONS, Department of (Title 170)
Gubernatorial Approvals
Tuition Assistance Program (Chapter 30) 2042

ENVIRONMENTAL Quality, Department of (Title 252)
Notices of Rulemaking Intent
Air Pollution Control (Chapter 100) 2031

GOVERNOR
Executive Orders
Convoking Second Extraordinary Session of Fiftieth Oklahoma Legislature (06-12) 2923
Ordering flags at half-staff to honor Judge Donald D. Powers (06-13) 2923
Ordering flags at half-staff in observation of Memorial Day (06-14) 2924

HEALTH, Oklahoma State Department of (Title 310)
Gubernatorial Approvals
Fee and Fine Schedule for Occupational Licensing (Chapter 110) 2042
Alarm Industry (Chapter 205) 2042
Barbers (Chapter 210) 2042
Food Service Establishments [REVOKED] (Chapter 256) 2042
Food Service Establishments (Chapter 257) 2043
Home Inspection Industry (Chapter 276) 2043
Smoking in Public Places And Indoor Workplaces (Chapter 355) 2043
Licensed Marital and Family Therapists (Chapter 400) 2043
Licensed Behavioral Practitioners (Chapter 403) 2043
Licensed Professional Counselors (Chapter 405) 2044
Emergency Medical Services (Chapter 641) 2044
Certified Workplace Medical Plans (Chapter 657) 2044
Hospice (Chapter 661) 2044
Nursing and Specialized Facilities (Chapter 675) 2045
Nurse Aide Training and Certification (Chapter 677) 2045
Permanent Final Adoptions
Fee and Fine Schedule for Occupational Licensing (Chapter 110) 2345
Alarm Industry (Chapter 205) 2346
Barbers (Chapter 210) 2353
Food Service Establishments [REVOKED] (Chapter 256) 2357
Food Service Establishments (Chapter 257) 2358
Home Inspection Industry (Chapter 276) 2359
Smoking in Public Places And Indoor Workplaces (Chapter 355) 2363
Licensed Marital and Family Therapists (Chapter 400) 2367
Licensed Behavioral Practitioners (Chapter 403) 2374
Licensed Professional Counselors (Chapter 405) 2380
Emergency Medical Services (Chapter 641) 2386
Certified Workplace Medical Plans (Chapter 657) 2404
Hospice (Chapter 661) 2412
Nursing and Specialized Facilities (Chapter 675) 2415
Nurse Aide Training and Certification (Chapter 677) 2422

HEALTH Care Authority, Oklahoma (Title 317)
Gubernatorial Approvals
Administrative Operations (Chapter 1) 2045
Grievance Procedures and Process (Chapter 2) 2045
Medical Providers-Fee for Service (Chapter 30) 2046, 2047, 2048, 2049
Medical Assistance for Adults and Children-Eligibility (Chapter 35) 2050
Oklahoma Employer and Employee Partnership for Insurance Coverage (Chapter 45) 2050
Permanent Final Adoptions
Administrative Operations (Chapter 1) 2428
Grievance Procedures and Process (Chapter 2) 2430
Medical Providers-Fee for Service (Chapter 30) 2440, 2460, 2461, 2463, 2477, 2487, 2489, 2500, 2508, 2537, 2540, 2554, 2555, 2557, 2562, 2566, 2571, 2572, 2575
Medical Assistance for Adults and Children-Eligibility (Chapter 35) 2580, 2583, 2586
Oklahoma Employer and Employee Partnership for Insurance Coverage (Chapter 45) 2590
HORSE Racing Commission, Oklahoma (Title 325)
Gubernatorial Approvals
Entries and Declarations (Chapter 25) 2050
Veterinarian Practices (Chapter 40) 2051
Medication and Equine Testing Procedures (Chapter 45) 2051
Objections and Protests; Hearings and Appeals (Chapter 70) 2051
Gaming Licensing Requirements (Chapter 80) 2051
Gaming Machine Specifications and Use and Operation Requirements (Chapter 85) 2052
Gaming Operations (Chapter 90) 2053
Emergency Adoptions
General Conduct (Chapter 35) 2069
Veterinarian Practices (Chapter 40) 2070
Medication and Equine Testing Procedures (Chapter 45) 2071
Gaming Licensing Requirements (Chapter 80) 2079
Gaming Machine Specifications and Use and Operation Requirements (Chapter 85) 2089
Gaming Operations (Chapter 90) 2116
Permanent Final Adoptions
Entries and Declarations (Chapter 25) 2592
Veterinarian Practices (Chapter 40) 2593
Medication and Equine Testing Procedures (Chapter 45) 2594
Objections and Protests; Hearings and Appeals (Chapter 70) 2602
Gaming Licensing Requirements (Chapter 80) 2602
Gaming Machine Specifications and Use and Operation Requirements (Chapter 85) 2613
Gaming Operations (Chapter 90) 2640
HOUSING Finance Agency, Oklahoma (Title 330)
Gubernatorial Approvals
Affordable Housing Tax Credit Program (Chapter 36) ... 2054
HUMAN Services, Department of (Title 340)
Gubernatorial Approvals
Administrative Components (Chapter 2) 2054, 2055
Adult Protective Services (Chapter 5) 2055
Food Stamp Program (Chapter 50) 2055
Aging Services Division (Chapter 105) 2055
Permanent Final Adoptions
Administrative Components (Chapter 2) ... 2644, 2648, 2661
Adult Protective Services (Chapter 5) 2662
Food Stamp Program (Chapter 50) 2665
HUMAN Services, Department of – *continued*
Permanent Final Adoptions – continued
Aging Services Division (Chapter 105) 2668
INSURANCE Department (Title 365)
Gubernatorial Approvals
Administrative Operations (Chapter 1) 2056
Life, Accident and Health (Chapter 10) 2056
Property and Casualty (Chapter 15) 2056
Licensure of Agents, Adjusters, Bail Bondsmen, Companies, Prepaid Funeral Benefits, and Viatical and Life Settlements Providers and Brokers (Chapter 25) 2056, 2057
Health Maintenance Organizations (HMO) (Chapter 40) 2057
Permanent Final Adoptions
Administrative Operations (Chapter 1) 2669
Life, Accident and Health (Chapter 10) 2672
Property and Casualty (Chapter 15) 2730
Licensure of Agents, Adjusters, Bail Bondsmen, Companies, Prepaid Funeral Benefits, and Viatical and Life Settlements Providers and Brokers (Chapter 25) 2735, 2738
Health Maintenance Organizations (HMO) (Chapter 40) 2758
JUVENILE Affairs, Office of (Title 377)
Gubernatorial Approvals
Function and Structure of the Office of Juvenile Affairs (Chapter 1) 2057
Administrative Services (Chapter 3) 2057, 2058
Juvenile Services Unit (Chapter 25) 2058
Residential Services (Chapter 30) 2058
Institutional Services (Chapter 35) 2058
Permanent Final Adoptions
Function and Structure of the Office of Juvenile Affairs (Chapter 1) 2758
Administrative Services (Chapter 3) 2761, 2764
Juvenile Services Unit (Chapter 25) 2767
Residential Services (Chapter 30) 2769
Institutional Services (Chapter 35) 2770
LABOR, Department of (Title 380)
Permanent Final Adoptions
Oklahoma Occupational Health and Safety Standards Act Rules (Chapter 40) 2771
LOTTERY Commission, Oklahoma (Title 429)
Permanent Final Adoptions
General Administration (Chapter 1) 2774
Retailer Provisions (Chapter 10) 2778
Instant Games (Chapter 15) 2783
Online Games (Chapter 20) 2791
MINES, Department of (Title 460)
Gubernatorial Approvals
Oklahoma Mining Commission (Chapter 1) 2058
Non-Coal Rules and Regulations (Chapter 10) 2058
The Permanent Regulations Governing the Coal Reclamation Act of 1979 (Chapter 20) 2059
OSTEOPATHIC Examiners, State Board of (Title 510)
Permanent Final Adoptions
Licensure of Osteopathic Physicians and Surgeons (Chapter 10) 2798
POLICE Pension and Retirement System, Oklahoma (Title 550)
Permanent Final Adoptions
Administrative Operations (Chapter 1) 2798
Oklahoma Police Deferred Option Plan (Chapter 15) 2799
Purchase of Transferred Credited Service (Chapter 20) 2801

PUBLIC Employees Relations Board (Title 585)
Emergency Adoptions
Oklahoma Municipal Employee Collective Bargaining Act (Chapter 20) 2120
PUBLIC Safety, Department of (Title 595)
Submissions for Review
Driver Licenses and Identification Cards (Chapter 10) ... 2035
Wreckers and Towing Services (Chapter 25) 2035
Withdrawn Rules
Wreckers and Towing Services (Chapter 25) 2067
REGENTS for Higher Education, State (Title 610)
Gubernatorial Approvals
Student Financial Aid and Scholarships (Chapter 25) 2059
TAX Commission, Oklahoma (Title 710)
Gubernatorial Approvals
Ad Valorem Tax (Chapter 10) 2059
Estates (Chapter 35) 2060
Gross Production (Chapter 45) 2060
Income (Chapter 50) 2060
Motor Fuel (Chapter 55) 2061
Motor Vehicles (Chapter 60) 2061
Sales and Use Tax (Chapter 65) 2061
Tobacco, Tobacco Products, and Cigarettes (Chapter 70) 2062
Various Tax Incentives (Chapter 85) 2062
Withholding (Chapter 90) 2062
Permanent Final Adoptions
Administrative Operations (Chapter 1) 2802
Ad Valorem Tax (Chapter 10) 2803
Alcohol, Mixed Beverages and Low-Point Beer (Chapter 20) 2813
Boats and Motors (Chapter 22) 2814
Coin Operated Vending Devices (Chapter 25) 2814
Estates (Chapter 35) 2815
Franchise Tax (Chapter 40) 2816
Gross Production (Chapter 45) 2816
Income (Chapter 50) 2824
Motor Fuel (Chapter 55) 2836
Motor Vehicles (Chapter 60) 2837
Sales and Use Tax (Chapter 65) 2847
Tobacco, Tobacco Products, and Cigarettes (Chapter 70) 2866, 2867
Various Tax Incentives (Chapter 85) 2870
Withholding (Chapter 90) 2870
Miscellaneous Areas of Regulatory and Administrative Authority (Chapter 95) 2874
TRANSPORTATION, Department of (Title 730)
Permanent Final Adoptions
Railroads (Chapter 40) 2879
TREASURER, State (Title 735)
Gubernatorial Approvals
Unclaimed Property (Chapter 80) 2063
UNIVERSITY Hospitals Trust (Title 753)
Submissions for Review
General Agency Rules (Chapter 1) 2036
USED Motor Vehicle and Parts Commission, Oklahoma (Title 765)
Gubernatorial Approvals
Organization and Method of Operations (Chapter 1) 2063
Informal and Formal Procedures (Chapter 2) 2063
Promulgation, Amendment, and Repeal of Rules (Chapter 3) 2063
Used Motor Vehicle Dealers (Chapter 10) 2063
Used Motor Vehicle Rebuilders (Chapter 11) 2063
Used Motor Vehicle ~~Salesmen~~ Salespersons (Chapter 15) 2064
Advertising (Chapter 16) 2064
Wholesale Used Motor Vehicle Dealers (Chapter 20) 2064
Automotive Dismantler and Parts Recyclers (Chapter 25) 2064
Buyer's Identification Cards (Chapter 30) 2065
Manufactured Home Dealers (Chapter 35) 2065
Manufactured Home Manufacturers (Chapter 36) 2065
Manufactured Home Installers (Chapter 37) 2065
Manufactured Home Salesperson (Chapter 38) 2065
Permanent Final Adoptions
Organization and Method of Operations (Chapter 1) 2881
Informal and Formal Procedures (Chapter 2) 2881
Promulgation, Amendment, and Repeal of Rules (Chapter 3) 2883
Used Motor Vehicle Dealers (Chapter 10) 2884
Used Motor Vehicle Rebuilders (Chapter 11) 2886
Used Motor Vehicle ~~Salesmen~~ Salespersons (Chapter 15) 2887
Advertising (Chapter 16) 2889
Wholesale Used Motor Vehicle Dealers (Chapter 20) 2891
Automotive Dismantler and Parts Recyclers (Chapter 25) 2893
Buyer's Identification Cards (Chapter 30) 2896
Manufactured Home Dealers (Chapter 35) 2896
Manufactured Home Manufacturers (Chapter 36) 2897
Manufactured Home Installers (Chapter 37) 2898
Manufactured Home Salespersons (Chapter 38) 2899
CAREER and Technology Education, Oklahoma Department of (Title 780)
Permanent Final Adoptions
Administration and Supervision (Chapter 10) 2901
Technology Centers (Chapter 15) 2904
Programs and Services (Chapter 20) 2911

Rules Affected Index

[(E) = Emergency action]

Rule		Register Page
10:1-1-4.1.	[AMENDED]	2123
10:15-1-2.	[AMENDED]	2124
10:15-18-4.	[AMENDED]	2127
10:15-18-9.	[AMENDED]	2127
10:15-27-13.	[REVOKED]	2127
10:15-29-1.1.	[REVOKED]	2127
10:15-29-3.	[REVOKED]	2127
10:15-29-4.	[REVOKED]	2128
10:15-29-5.	[REVOKED]	2128
10:15-29-6.	[REVOKED]	2128
10:15-29-7.	[REVOKED]	2129
10:15-29-8.	[REVOKED]	2129
10:15-29-9.	[REVOKED]	2129
10:15-29-10.	[REVOKED]	2129
10:15-30-1.	[AMENDED]	2129
10:15-30-2.	[AMENDED]	2129
10:15-30-3.	[AMENDED]	2130
10:15-30-4.	[AMENDED]	2130
10:15-30-5.	[AMENDED]	2130
10:15-30-6.	[AMENDED]	2130
10:15-30-7.	[AMENDED]	2130
10:15-30-8.	[AMENDED]	2130
10:15-30-9.	[NEW]	2131
10:15-32-5.	[AMENDED]	2131
10:15-33-1.	[AMENDED]	2132
10:15-33-2.	[AMENDED]	2132
10:15-33-3.	[AMENDED]	2132
10:15-33-3.	[NEW]	2133
10:15-33-5.	[AMENDED]	2133
10:15-33-6.	[AMENDED]	2133
10:15-33-7.	[AMENDED]	2133
10:15-39-1.	[AMENDED]	2134
10:15-43-1.	[NEW]	2134
10:15-43-2.	[NEW]	2135
10:15-43-3.	[NEW]	2135
10:15-43-4.	[NEW]	2135
10:15-43-5.	[NEW]	2135
10:15-43-6.	[NEW]	2135
35:1-1-1.	[AMENDED]	2136
35:1-1-3.	[AMENDED]	2136
35:1-3-1.	[AMENDED]	2136
35:1-3-2.	[AMENDED]	2136
35:1-3-3.	[AMENDED]	2136
35:1-3-4.	[AMENDED]	2136
35:1-5-1.	[AMENDED]	2139
35:1-5-2.	[AMENDED]	2139
35:1-5-3.	[AMENDED]	2139
35:1-5-4.	[REVOKED]	2139
35:1-5-5.	[AMENDED]	2139
35:1-5-6.	[REVOKED]	2139
35:1-7-1.	[AMENDED]	2140
35:1-7-2.	[REVOKED]	2140
35:1-7-3.	[REVOKED]	2140
35:1-7-4.	[REVOKED]	2140
35:1-7-5.	[REVOKED]	2140
35:1-9-1.	[AMENDED]	2140
35:1-9-3.	[AMENDED]	2140
35:1-9-4.	[AMENDED]	2141
35:2-3-26.	[AMENDED]	865
35:3-1-30.	[NEW]	2141
35:3-1-31.	[NEW]	2143
35:3-1-32.	[NEW]	2143
35:13-1-1.	[NEW]	2144
35:13-1-2.	[NEW]	2144
35:13-1-3.	[NEW]	2144
35:13-1-4.	[NEW]	2144
35:13-1-5.	[NEW]	2144
35:15-1-1.	[AMENDED]	2145
35:15-1-2.	[NEW]	2145
35:15-1-3.	[NEW]	2145
35:15-9-7.	[AMENDED]	2153
35:15-9-8.	[AMENDED]	2153
35:15-9-9.	[AMENDED]	2153
35:15-9-10.	[AMENDED]	2153
35:15-9-11.	[AMENDED]	2153
35:15-11-5.	[AMENDED]	2146
35:15-11-15.	[AMENDED]	2146
35:15-11-17.	[AMENDED]	2146
35:15-11-18.	[AMENDED]	2154
35:15-11-20.	[AMENDED] (E)	11
35:15-11-20.	[AMENDED]	866
35:15-15-4.	[AMENDED]	2155
35:15-15-33.	[AMENDED]	2156
35:15-15-38.	[AMENDED]	2157
35:15-15-41.	[AMENDED]	2157
35:15-16-1.	[NEW]	2157
35:15-17-1.	[AMENDED]	2146
35:15-19-7.	[AMENDED]	2148
35:15-22-1.	[AMENDED]	2158
35:15-22-2.	[AMENDED]	2160
35:15-22-31.	[AMENDED]	2160
35:15-22-32.	[AMENDED]	2161
35:15-22-33.	[AMENDED]	2161
35:15-22-35.	[AMENDED]	2161
35:15-22-51.	[AMENDED]	2162
35:15-22-53.	[AMENDED]	2162
35:15-22-71.	[AMENDED]	2162
35:15-22-91.	[AMENDED]	2163
35:15-22-113.	[AMENDED]	2163
35:15-24-2.	[AMENDED]	2163
35:15-24-3.	[AMENDED]	2164
35:15-40-1.	[AMENDED]	2149
35:15-40-49.1.	[AMENDED]	867
35:15-42-1.	[AMENDED]	2150
35:15-47-2.	[AMENDED]	2152
35:15-47-6.	[AMENDED] (E)	105
35:15-47-6.	[AMENDED]	2165
35:15-47-18.	[AMENDED] (E)	106
35:15-47-18.	[AMENDED]	2165
35:15, App. F.	[REVOKED]	869
35:15, App. N.	[REVOKED]	871
35:15, App. O.	[REVOKED]	875
35:17-9-1.	[NEW]	876
35:17-9-2.	[NEW]	876
35:17-9-3.	[NEW]	876
35:17-9-4.	[NEW]	877
35:17-9-5.	[NEW]	877
35:17-9-6.	[NEW]	878
35:17-9-7.	[NEW]	878
35:17-9-8.	[NEW]	878
35:20-3-22.	[AMENDED]	2166
35:30-17-6.	[AMENDED]	2167

35:30-17-24.1. [NEW] 1199
35:30-17-28. [AMENDED] 2169
35:30-29-37. [AMENDED] 2172
35:30-38-1. [NEW] 878
35:30-38-2. [NEW] 878
35:30-38-3. [NEW] 879
35:30-38-4. [NEW] 879
35:30-38-5. [NEW] 879
35:30-38-6. [NEW] 879
35:30-38-7. [NEW] 879
35:30-38-8. [NEW] 880
35:30-38-9. [NEW] 880
35:30-38-10. [NEW] 880
35:30-38-11. [RESERVED] 880
35:30-38-12. [NEW] 880
35:37-3-1. [AMENDED] 2172
35:37-3-3. [AMENDED] 2172
35:37-5-1. [AMENDED] 2173
35:37-5-2. [AMENDED] 2173
35:44-3-1. [NEW] (E) 505
35:44-3-1. [NEW] 881
35:44-3-2. [NEW] (E) 505
35:44-3-2. [NEW] 881
35:44-3-3. [NEW] (E) 506
35:44-3-3. [NEW] 882
38:1-1-1. [NEW] (E) 123
38:1-1-1. [NEW] 2174
38:1-1-2. [NEW] (E) 123
38:1-1-2. [NEW] 2174
38:1-1-3. [NEW] (E) 124
38:1-1-3. [NEW] 2175
38:1-1-4. [NEW] (E) 124
38:1-1-5. [NEW] (E) 125
38:1-1-5. [NEW] 2175
38:1-1-6. [NEW] (E) 125
38:1-1-6. [NEW] 2176
38:1-1-7. [NEW] (E) 125
38:1-1-7. [NEW] 2176
38:1-1-8. [NEW] (E) 125
38:1-1-8. [NEW] 2176
38:1-1-9. [NEW] (E) 125
38:1-1-9. [NEW] 2176
38:1-1-10. [NEW] (E) 125
38:1-1-10. [NEW] 2176
38:1-1-11. [NEW] (E) 125
38:1-1-11. [NEW] 2176
38:1-1-12. [NEW] (E) 126
38:1-1-12. [NEW] 2176
38:1-1-13. [NEW] (E) 126
38:1-1-13. [NEW] 2176
38:1-1-14. [NEW] (E) 126
38:1-1-14. [NEW] 2176
38:1-1-15. [NEW] (E) 126
38:1-1-15. [NEW] 2177
38:1-1-16. [NEW] (E) 126
38:1-1-16. [NEW] 2177
38:1-3-1. [NEW] (E) 126
38:1-3-1. [NEW] 2177
38:1-3-2. [NEW] (E) 127
38:1-3-3. [NEW] (E) 127
38:1-3-4. [NEW] (E) 127
38:1-3-5. [NEW] (E) 127
38:1-3-6. [NEW] (E) 127
38:1-3-6. [NEW] 2177
38:10-1-1. [NEW] (E) 128
38:10-1-1. [NEW] 2178
38:10-1-2. [NEW] (E) 128
38:10-1-2. [NEW] 2178
38:10-1-3. [NEW] (E) 129
38:10-1-3. [NEW] 2179
38:10-1-4. [NEW] (E) 129
38:10-1-4. [NEW] 2179
38:10-1-5. [NEW] (E) 129
38:10-1-5. [NEW] 2179
38:10-1-6. [NEW] (E) 129
38:10-1-6. [NEW] 2180
38:10-1-7. [NEW] (E) 129
38:10-1-7. [NEW] 2180
38:10-1-8. [NEW] (E) 129
38:10-1-8. [NEW] 2180
38:10-1-9. [NEW] (E) 130
38:10-1-9. [NEW] 2180
38:10-3-1. [NEW] (E) 130
38:10-3-1. [NEW] 2181
38:10-3-2. [NEW] (E) 130
38:10-3-2. [NEW] 2181
38:10-3-3. [NEW] (E) 130
38:10-3-3. [NEW] 2181
38:10-3-4. [NEW] (E) 131
38:10-3-4. [NEW] 2182
38:10-3-5. [NEW] (E) 131
38:10-3-5. [NEW] 2182
38:10-3-6. [NEW] (E) 132
38:10-3-6. [NEW] 2182
38:10-5-1. [NEW] (E) 132
38:10-5-1. [NEW] 2182
38:10-5-2. [NEW] (E) 132
38:10-5-2. [NEW] 2182
38:10-5-3. [NEW] (E) 132
38:10-5-3. [NEW] 2183
38:10-7-1. [NEW] (E) 132
38:10-7-1. [NEW] 2183
38:10-7-2. [NEW] (E) 132
38:10-7-2. [NEW] 2183
38:10-7-3. [NEW] (E) 133
38:10-7-3. [NEW] 2184
38:10-7-4. [NEW] (E) 134
38:10-7-5. [NEW] (E) 134
38:10-7-5. [NEW] 2184
38:10-7-6. [NEW] (E) 134
38:10-7-6. [NEW] 2184
38:10-7-7. [NEW] (E) 134
38:10-7-7. [NEW] 2184
38:10-7-8. [NEW] (E) 135
38:10-7-8. [NEW] 2185
38:10-7-9. [NEW] (E) 135
38:10-7-9. [NEW] 2185
38:10-9-1. [NEW] (E) 135
38:10-9-1. [NEW] 2185
38:10-9-2. [NEW] (E) 135
38:10-9-2. [NEW] 2185
38:10-9-3. [NEW] (E) 135
38:10-9-4. [NEW] (E) 135
38:10-9-4. [NEW] 2185
38:10-11-1. [NEW] (E) 136
38:10-11-1. [NEW] 2186
38:10-11-2. [NEW] (E) 136
38:10-11-2. [NEW] 2186
38:10-11-3. [NEW] (E) 137
38:10-11-3. [NEW] 2186
38:10-13-1. [NEW] (E) 137
38:10-13-1. [NEW] 2186
38:10-13-2. [NEW] (E) 137
38:10-13-2. [NEW] 2187

38:10-13-3. . . . . [NEW] (E) 137
38:10-13-3. . . . . [NEW] 2187
38:10-13-4. . . . . [NEW] (E) 137
38:10-13-4. . . . . [NEW] 2187
38:10-13-5. . . . . [NEW] (E) 137
38:10-13-5. . . . . [NEW] 2187
38:10-13-6. . . . . [NEW] (E) 137
38:10-13-6. . . . . [NEW] 2187
38:10, App. A. . . . . [NEW] 2188
45:30-1-2. . . . . [AMENDED] 882
45:30-5-7. . . . . [AMENDED] 883
75:1-1-1. . . . . [NEW] (E) 329
75:1-1-1. . . . . [NEW] 2190
75:1-1-1.1. . . . . [NEW] (E) 329
75:1-1-1.1. . . . . [NEW] 2190
75:1-1-2. . . . . [NEW] (E) 330
75:1-1-2. . . . . [NEW] 2191
75:1-1-3. . . . . [NEW] (E) 330
75:1-1-3. . . . . [NEW] 2191
75:1-1-4. . . . . [NEW] (E) 330
75:1-1-4. . . . . [NEW] 2191
75:1-1-5. . . . . [NEW] (E) 330
75:1-1-5. . . . . [NEW] 2191
75:1-1-6. . . . . [NEW] (E) 330
75:1-1-6. . . . . [NEW] 2191
75:1-1-7. . . . . [NEW] (E) 330
75:1-1-7. . . . . [NEW] 2191
75:1-1-8. . . . . [NEW] (E) 331
75:1-1-8. . . . . [NEW] 2191
75:1-1-9. . . . . [NEW] (E) 331
75:1-1-9. . . . . [NEW] 2192
75:1-1-10. . . . . [NEW] (E) 331
75:1-1-10. . . . . [NEW] 2192
75:1-3-1. . . . . [NEW] (E) 332
75:1-3-1. . . . . [NEW] 2192
75:1-3-2. . . . . [NEW] (E) 332
75:1-3-2. . . . . [NEW] 2192
75:1-3-3. . . . . [NEW] (E) 332
75:1-3-3. . . . . [NEW] 2192
75:1-3-14. . . . . [NEW] (E) 332
75:1-3-14. . . . . [NEW] 2193
75:1-3-15. . . . . [NEW] (E) 332
75:1-3-15. . . . . [NEW] 2193
75:1-3-16. . . . . [NEW] (E) 332
75:1-3-16. . . . . [NEW] 2193
75:1-3-17. . . . . [NEW] (E) 332
75:1-3-17. . . . . [NEW] 2193
75:1-3-18. . . . . [NEW] (E) 332
75:1-3-18. . . . . [NEW] 2193
75:1-3-19. . . . . [NEW] (E) 332
75:1-3-19. . . . . [NEW] 2193
75:1-3-20. . . . . [NEW] (E) 333
75:1-3-20. . . . . [NEW] 2193
75:1-5-1. . . . . [NEW] (E) 333
75:1-5-1. . . . . [NEW] 2194
75:1-5-2. . . . . [NEW] (E) 333
75:1-5-2. . . . . [NEW] 2194
75:1-5-3. . . . . [NEW] (E) 333
75:1-5-3. . . . . [NEW] 2194
75:1-5-4. . . . . [NEW] (E) 333
75:1-5-4. . . . . [NEW] (E) 334
75:1-5-4. . . . . [NEW] 2194
75:1-5-5. . . . . [NEW] (E) 334
75:1-5-5. . . . . [NEW] (E) 334
75:1-5-5. . . . . [NEW] 2194
75:1-5-5.1. . . . . [NEW] (E) 334
75:1-5-5.1. . . . . [NEW] 2194
75:1-5-5.2. . . . . [NEW] (E) 334
75:1-5-5.2. . . . . [NEW] 2194
75:1-5-5.3. . . . . [NEW] (E) 334
75:1-5-5.3. . . . . [NEW] 2194
75:1-5-5.4. . . . . [NEW] 2195
75:1-5-5.5. . . . . [NEW] 2195
75:1-5-6. . . . . [NEW] (E) 334
75:1-5-6. . . . . [NEW] 2195
75:1-5-7. . . . . [NEW] (E) 334
75:1-5-7. . . . . [NEW] 2195
75:1-5-8. . . . . [NEW] (E) 335
75:1-5-8. . . . . [NEW] 2195
75:1-5-9. . . . . [NEW] (E) 335
75:1-5-9. . . . . [NEW] 2195
75:1-5-10. . . . . [NEW] (E) 335
75:1-5-10. . . . . [NEW] 2196
75:1-5-11. . . . . [NEW] (E) 336
75:1-5-11. . . . . [NEW] 2196
75:1-5-12. . . . . [NEW] (E) 336
75:1-5-12. . . . . [NEW] 2196
75:1-7-1. . . . . [NEW] (E) 336
75:1-7-1. . . . . [NEW] 2197
75:1-7-2. . . . . [NEW] (E) 336
75:1-7-2. . . . . [NEW] 2197
75:1-7-3. . . . . [NEW] (E) 336
75:1-7-3. . . . . [NEW] 2197
75:1-7-4. . . . . [NEW] (E) 336
75:1-7-4. . . . . [NEW] 2197
75:1-7-5. . . . . [NEW] (E) 336
75:1-7-5. . . . . [NEW] 2197
75:1-7-6. . . . . [NEW] (E) 337
75:1-7-6. . . . . [NEW] 2197
75:1-7-7. . . . . [NEW] (E) 338
75:1-7-7. . . . . [NEW] 2199
75:1-7-8. . . . . [NEW] (E) 339
75:1-7-8. . . . . [NEW] 2199
75:1-7-9. . . . . [NEW] (E) 339
75:1-7-9. . . . . [NEW] 2199
75:1-7-10. . . . . [NEW] (E) 339
75:1-7-10. . . . . [NEW] 2200
75:1-7-11. . . . . [NEW] (E) 339
75:1-7-11. . . . . [NEW] 2200
75:15-1-1. . . . . [AMENDED] (E) 340
75:15-1-1. . . . . [AMENDED] 2200
75:15-1-2. . . . . [AMENDED] (E) 340
75:15-1-2. . . . . [AMENDED] 2200
75:15-1-3. . . . . [AMENDED] 2203
75:15-1-4. . . . . [AMENDED] (E) 342
75:15-1-4. . . . . [AMENDED] 2204
75:15-1-5. . . . . [NEW] 2204
75:15-1-6. . . . . [AMENDED] (E) 342
75:15-1-6. . . . . [AMENDED] 2204
75:15-3-1. . . . . [AMENDED] (E) 343
75:15-3-1. . . . . [AMENDED] 2204
75:15-3-2. . . . . [AMENDED] (E) 344
75:15-3-2. . . . . [AMENDED] 2205
75:15-3-7. . . . . [AMENDED] (E) 344
75:15-3-7. . . . . [AMENDED] 2205
75:15-3-8. . . . . [AMENDED] (E) 345
75:15-3-8. . . . . [AMENDED] 2206
75:15-3-9. . . . . [AMENDED] (E) 345
75:15-3-9. . . . . [REVOKED] 2207
75:15-3-10. . . . . [AMENDED] (E) 346
75:15-3-10. . . . . [AMENDED] 2208
75:15-4-1. . . . . [NEW] 2208
75:15-4-2. . . . . [NEW] 2208
75:15-4-3. . . . . [NEW] 2208

75:15-4-4. . . . . [NEW] 2209
75:15-4-5. . . . . [NEW] 2209
75:15-4-6. . . . . [NEW] 2210
75:15-4-7. . . . . [NEW] 2210
75:15-4-8. . . . . [NEW] 2210
75:15-4-9. . . . . [NEW] 2210
75:15-4-10. . . . . [NEW] 2211
75:15-4-11. . . . . [NEW] 2211
75:15-4-12. . . . . [NEW] 2211
75:15-4-13. . . . . [NEW] 2211
75:15-4-14. . . . . [NEW] 2211
75:15-4-15. . . . . [NEW] 2211
75:15-4-16. . . . . [NEW] 2211
75:15-4-17. . . . . [NEW] 2212
75:15-4-18. . . . . [NEW] 2212
75:15-4-19. . . . . [NEW] 2212
75:15-5-1. . . . . [AMENDED] 2212
75:15-5-2. . . . . [AMENDED] (E) 346
75:15-5-2. . . . . [AMENDED] 2212
75:15-5-3. . . . . [AMENDED] (E) 346
75:15-5-3. . . . . [AMENDED] 2212
75:15-5-3.1. . . . . [AMENDED] (E) 347
75:15-5-3.1. . . . . [AMENDED] 2213
75:15-5-4. . . . . [AMENDED] (E) 348
75:15-5-4. . . . . [AMENDED] 2215
75:15-5-5. . . . . [AMENDED] (E) 348
75:15-5-5. . . . . [AMENDED] 2215
75:15-5-6. . . . . [AMENDED] (E) 349
75:15-5-6. . . . . [AMENDED] 2215
75:15-5-10. . . . . [AMENDED] (E) 349
75:15-5-10. . . . . [REVOKED] 2215
75:15-7-1. . . . . [AMENDED] (E) 349
75:15-7-1. . . . . [AMENDED] 2216
75:15-7-2. . . . . [AMENDED] (E) 350
75:15-7-2. . . . . [AMENDED] 2216
75:15-7-3. . . . . [AMENDED] (E) 350
75:15-7-3. . . . . [AMENDED] 2216
75:15-7-4. . . . . [AMENDED] (E) 350
75:15-7-4. . . . . [AMENDED] 2216
75:15-7-5. . . . . [AMENDED] (E) 350
75:15-7-5. . . . . [AMENDED] 2216
75:15-7-6. . . . . [AMENDED] (E) 350
75:15-7-6. . . . . [AMENDED] 2216
75:15-7-7. . . . . [AMENDED] (E) 350
75:15-7-7. . . . . [AMENDED] 2217
75:15-7-8. . . . . [NEW] 2217
75:15-9-1. . . . . [AMENDED] (E) 351
75:15-9-1. . . . . [AMENDED] 2218
75:15-9-2. . . . . [AMENDED] (E) 351
75:15-9-2. . . . . [AMENDED] 2218
75:15-9-7. . . . . [AMENDED] (E) 351
75:15-9-7. . . . . [AMENDED] 2218
75:15-9-8. . . . . [AMENDED] (E) 351
75:15-9-8. . . . . [AMENDED] 2218
75:15-9-9. . . . . [AMENDED] (E) 351
75:15-9-9. . . . . [AMENDED] 2218
75:15-9-10. . . . . [AMENDED] (E) 352
75:15-9-10. . . . . [REVOKED] 2219
75:15-11-1. . . . . [AMENDED] (E) 352
75:15-11-1. . . . . [REVOKED] 2219
75:15-11-2. . . . . [AMENDED] (E) 352
75:15-11-2. . . . . [REVOKED] 2219
75:15-11-3. . . . . [AMENDED] (E) 352
75:15-11-3. . . . . [REVOKED] 2219
75:15-13-1. . . . . [AMENDED] (E) 352
75:15-13-1. . . . . [AMENDED] 2219
75:15-13-2. . . . . [AMENDED] (E) 352
75:15-13-2. . . . . [AMENDED] 2219
75:15-13-3. . . . . [AMENDED] (E) 353
75:15-13-3. . . . . [AMENDED] 2219
75:15-13-4. . . . . [AMENDED] (E) 353
75:15-13-4. . . . . [AMENDED] 2220
75:15-13-5. . . . . [AMENDED] (E) 353
75:15-13-5. . . . . [AMENDED] 2220
75:15-13-8. . . . . [AMENDED] (E) 353
75:15-13-8. . . . . [AMENDED] 2220
75:15-13-9. . . . . [AMENDED] (E) 353
75:15-13-9. . . . . [AMENDED] 2220
75:15-13-10. . . . . [AMENDED] (E) 353
75:15-13-10. . . . . [AMENDED] 2220
75:15-13-20. . . . . [AMENDED] (E) 353
75:15-13-20. . . . . [REVOKED] 2220
75:15-13-20.1. . . . . [AMENDED] (E) 354
75:15-13-20.1. . . . . [AMENDED] 2221
75:15-13-20.2. . . . . [AMENDED] (E) 354
75:15-13-20.2. . . . . [AMENDED] 2221
75:15-13-24. . . . . [AMENDED] (E) 354
75:15-13-24. . . . . [AMENDED] 2222
75:15-13-25. . . . . [AMENDED] 2222
75:15-13-26. . . . . [AMENDED] (E) 354
75:15-13-26. . . . . [AMENDED] 2222
75:15-13-27. . . . . [AMENDED] (E) 355
75:15-13-27. . . . . [AMENDED] 2222
75:15-13-28. . . . . [AMENDED] (E) 355
75:15-13-28. . . . . [AMENDED] 2222
75:15-13-29. . . . . [AMENDED] (E) 355
75:15-13-29. . . . . [AMENDED] 2222
75:15-13-30. . . . . [AMENDED] (E) 355
75:15-13-30. . . . . [AMENDED] 2223
75:15-15-1. . . . . [AMENDED] (E) 355
75:15-15-1. . . . . [AMENDED] 2223
75:15-15-2. . . . . [AMENDED] (E) 355
75:15-15-2. . . . . [REVOKED] 2223
75:15-15-3. . . . . [AMENDED] (E) 355
75:15-15-3. . . . . [AMENDED] 2223
75:15-15-4. . . . . [AMENDED] (E) 356
75:15-15-4. . . . . [AMENDED] 2223
75:15-17-1. . . . . [AMENDED] (E) 356
75:15-17-1. . . . . [AMENDED] 2224
75:15-17-2. . . . . [AMENDED] (E) 356
75:15-17-2. . . . . [REVOKED] 2224
75:15-17-3. . . . . [AMENDED] (E) 356
75:15-17-3. . . . . [AMENDED] 2224
75:15-17-4. . . . . [AMENDED] (E) 357
75:15-17-4. . . . . [AMENDED] 2224
87:1-3-14. . . . . [AMENDED] (E) 12
87:1-3-14. . . . . [AMENDED] 1637
87:10-17-3. . . . . [AMENDED] (E) 13
87:10-17-3. . . . . [AMENDED] 1638
87:10-19-1. . . . . [AMENDED] (E) 14
87:10-19-1. . . . . [AMENDED] 1640
87:10-25-2. . . . . [AMENDED] (E) 14
87:10-25-2. . . . . [AMENDED] 1640
87:10-25-9. . . . . [AMENDED] (E) 15
87:10-25-9. . . . . [AMENDED] 1640
87:10-25-10. . . . . [AMENDED] (E) 15
87:10-25-10. . . . . [AMENDED] 1640
87:10-27-2. . . . . [AMENDED] (E) 15
87:10-27-2. . . . . [AMENDED] 1640
87:10-27-4. . . . . [AMENDED] (E) 15
87:10-27-4. . . . . [AMENDED] 1641
87:10-27-9. . . . . [AMENDED] (E) 15
87:10-27-9. . . . . [AMENDED] 1641
87:10-27-10. . . . . [AMENDED] (E) 16

87:10-27-10. . . . . [AMENDED] 1641
87:10-35-1. . . . . [NEW] (E) 16
87:10-35-1. . . . . [NEW] 1641
87:20-1-1. . . . . [NEW] (E) 16
87:20-1-1. . . . . [NEW] 1642
87:20-1-2. . . . . [NEW] (E) 17
87:20-1-2. . . . . [NEW] 1642
87:20-1-3. . . . . [NEW] (E) 17
87:20-1-3. . . . . [NEW] 1642
120:10-3-12. . . . . [AMENDED] 1643
120:10-5-1. . . . . [REVOKED] 1644
120:10-5-7. . . . . [REVOKED] 1644
120:10-15-1. . . . . [NEW] 1645
120:10-15-2. . . . . [NEW] 1645
120:10-15-3. . . . . [NEW] 1645
120:10-15-4. . . . . [NEW] 1646
120:10-15-5. . . . . [NEW] 1646
120:10-15-6. . . . . [NEW] 1646
120:10-15-7. . . . . [NEW] 1646
120:10-15-8. . . . . [NEW] 1646
120:10-15-9. . . . . [NEW] 1646
120:10-15-10. . . . . [NEW] 1647
120:10-15-11. . . . . [NEW] 1647
120:10-15-12. . . . . [NEW] 1647
120:10-15-13. . . . . [NEW] 1647
120:10-15-14. . . . . [NEW] 1647
120:10-15-15. . . . . [NEW] 1647
120:10, App. C. . . . . [NEW] 1648
120:10, App. D. . . . . [NEW] 1649
150:10-1-11. . . . . [NEW] 1200
150:65-1-2. . . . . [AMENDED] 1201
150:65-1-3. . . . . [AMENDED] 1202
150:65-1-6. . . . . [AMENDED] 1202
150:65-6-3. . . . . [AMENDED] 1202
150:65-6-4. . . . . [AMENDED] 1203
150:65-6-6. . . . . [AMENDED] 1203
150:115-1-1. . . . . [NEW] (E) 106
150:115-1-1. . . . . [NEW] 1204
150:115-1-2. . . . . [NEW] (E) 106
150:115-1-2. . . . . [NEW] 1204
150:115-1-3. . . . . [NEW] (E) 107
150:115-1-3. . . . . [NEW] 1204
150:115-1-4. . . . . [NEW] (E) 107
150:115-1-4. . . . . [NEW] 1205
150:120-1-1. . . . . [NEW] 1205
150:120-1-2. . . . . [NEW] 1206
150:120-1-3. . . . . [NEW] 1206
150:120-3-1. . . . . [NEW] 1206
150:120-3-2. . . . . [NEW] 1206
150:120-3-3. . . . . [NEW] 1206
150:120-3-4. . . . . [NEW] 1206
150:120-3-5. . . . . [NEW] 1206
150:120-3-6. . . . . [NEW] 1207
150:120-5-1. . . . . [NEW] 1207
150:120-5-2. . . . . [NEW] 1207
150:120-5-3. . . . . [NEW] 1207
150:120-5-4. . . . . [NEW] 1207
150:120-5-5. . . . . [NEW] 1207
150:120-7-1. . . . . [NEW] 1207
150:120-7-2. . . . . [NEW] 1207
150:120-7-3. . . . . [NEW] 1207
150:120-7-4. . . . . [NEW] 1208
150:120-7-5. . . . . [NEW] 1208
150:120-7-6. . . . . [NEW] 1208
150:120-9-1. . . . . [NEW] 1208
150:120-9-2. . . . . [NEW] 1209
150:120-9-3. . . . . [NEW] 1209
150:120-9-4. . . . . [NEW] 1209
150:120-9-5. . . . . [NEW] 1209
150:120-9-6. . . . . [NEW] 1209
150:120-9-7. . . . . [NEW] 1209
150:120-9-8. . . . . [NEW] 1209
150:120-11-1. . . . . [NEW] 1210
150:120-11-10. . . . . [NEW] 1210
150:120-11-11. . . . . [NEW] 1210
150:120-11-12. . . . . [NEW] 1210
150:120-11-13. . . . . [NEW] 1210
150:120-11-20. . . . . [NEW] 1210
150:120-11-21. . . . . [NEW] 1210
150:120-11-22. . . . . [NEW] 1210
150:120-11-30. . . . . [NEW] 1211
150:120-11-31. . . . . [NEW] 1211
150:120-11-32. . . . . [NEW] 1211
150:120-11-33. . . . . [NEW] 1211
150:120-11-34. . . . . [NEW] 1211
158:1-3-2. . . . . [AMENDED] 1211
158:10-3-1. . . . . [AMENDED] 1212
158:10-3-2. . . . . [AMENDED] 1212
158:30-1-2. . . . . [AMENDED] 1213
158:30-1-4. . . . . [AMENDED] 1214
158:30-5-1. . . . . [AMENDED] (E) 1147
158:30-9-1. . . . . [AMENDED] (E) 1147
158:30-9-1. . . . . [AMENDED] 1214
158:30-13-2. . . . . [AMENDED] 1215
158:30-13-3. . . . . [AMENDED] 1215
158:40-3-1. . . . . [AMENDED] 1216
158:40-7-2. . . . . [AMENDED] 1216
158:40-7-6. . . . . [NEW] (E) 1148
158:40-13-2. . . . . [AMENDED] 1216
158:50-1-2. . . . . [AMENDED] 1217
158:50-1-4. . . . . [AMENDED] 1218
158:50-9-1. . . . . [AMENDED] (E) 1149
158:50-11-1. . . . . [AMENDED] 1218
158:50-13-2. . . . . [AMENDED] 1218
158:50-13-3. . . . . [AMENDED] 1218
158:50-13-4. . . . . [AMENDED] 1219
158:60-1-2. . . . . [AMENDED] 1219
158:60-5-2. . . . . [AMENDED] 1220
158:60-5-4. . . . . [AMENDED] 1220
158:60-5-5. . . . . [AMENDED] 1220
165:5-1-7. . . . . [AMENDED] 2226
165:5-3-1. . . . . [AMENDED] (E) 506
165:5-3-1. . . . . [AMENDED] 2226
165:5-7-14. . . . . [AMENDED] 2228
165:5-7-65. . . . . [AMENDED] (E) 508
165:5-7-65. . . . . [AMENDED] 2228
165:5-25-1. . . . . [NEW] (E) 508
165:5-25-1. . . . . [NEW] 2228
165:5-25-2. . . . . [NEW] (E) 508
165:5-25-2. . . . . [NEW] 2229
165:5-25-3. . . . . [NEW] (E) 509
165:5-25-3. . . . . [NEW] 2229
165:5-25-4. . . . . [NEW] (E) 509
165:5-25-4. . . . . [NEW] 2229
165:5-25-5. . . . . [NEW] (E) 509
165:5-25-5. . . . . [NEW] 2229
165:10-5-5. . . . . [AMENDED] 2231
165:10-5-6. . . . . [AMENDED] 2232
165:10-7-3. . . . . [AMENDED] 2235
165:10-7-16. . . . . [AMENDED] 2235
165:10-7-17. . . . . [AMENDED] 2239
165:10-7-19. . . . . [AMENDED] 2242
165:10-7-20. . . . . [AMENDED] 2245
165:10-7-22. . . . . [AMENDED] 2247

165:10-7-26. . . . . [AMENDED] 2247
165:10-7-27. . . . . [AMENDED] 2250
165:10-7-28. . . . . [AMENDED] 2251
165:10-7-29. . . . . [AMENDED] 2252
165:10-7-32. . . . . [AMENDED] 2254
165:10-21-23. . . . . [AMENDED] 2254
165:10-21-24. . . . . [AMENDED] 2254
165:10-21-37. . . . . [AMENDED] 2254
165:10-21-38. . . . . [AMENDED] 2255
165:10-21-45. . . . . [AMENDED] 2255
165:10-21-47. . . . . [AMENDED] 2255
165:10-21-47.1. . . . . [AMENDED] 2256
165:10-21-57. . . . . [AMENDED] 2256
165:10-21-58. . . . . [AMENDED] 2256
165:10-21-67. . . . . [AMENDED] 2256
165:10-21-68. . . . . [AMENDED] 2257
165:10-21-77. . . . . [AMENDED] 2257
165:10-21-82.2. . . . . [AMENDED] 2257
165:10-21-82.3. . . . . [AMENDED] 2258
165:10-21-85. . . . . [AMENDED] 2258
165:10-21-92. . . . . [AMENDED] 2259
165:10-21-95. . . . . [NEW] 2259
165:10-21-96. . . . . [NEW] 2259
165:10-21-97. . . . . [NEW] 2259
165:15-1-1. . . . . [AMENDED] 1650
165:15-1-2. . . . . [AMENDED] 1650
165:15-3-16. . . . . [AMENDED] 1653
165:15-3-20. . . . . [AMENDED] 1653
165:15-3-21. . . . . [AMENDED] 1653
165:15-3-22. . . . . [AMENDED] 1656
165:15-3-24.1. . . . . [AMENDED] 1657
165:15-3-24.3. . . . . [AMENDED] 1658
165:15-3-25. . . . . [AMENDED] 1658
165:15-9-1. . . . . [AMENDED] 1658
165:15-9-3. . . . . [AMENDED] 1658
165:15-15-8. . . . . [AMENDED] 1658
165:15-15-9. . . . . [AMENDED] 1658
165:15-15-28. . . . . [AMENDED] 1659
165:15-15-35. . . . . [AMENDED] 1659
165:15, App. A. . . . . [REVOKED] 1660
165:15, App. A. . . . . [NEW] 1660
165:25-1-11. . . . . [AMENDED] 2261
165:25-1-23.1. . . . . [NEW] 2263
165:25-1-24.1. . . . . [NEW] 2263
165:25-1-25. . . . . [RENUMBERED TO 165:25-1-24.1] 2263
165:25-1-41. . . . . [AMENDED] 2264
165:25-1-42. . . . . [AMENDED] 2264
165:25-1-48. . . . . [AMENDED] 2264
165:25-1-55. . . . . [AMENDED] 2264
165:25-1-56. . . . . [AMENDED] 2265
165:25-1-101. . . . . [NEW] 2265
165:25-1-102. . . . . [NEW] 2266
165:25-1-103. . . . . [NEW] 2266
165:25-2-2. . . . . [AMENDED] (E) 138
165:25-2-2. . . . . [AMENDED] 2267
165:25-2-4. . . . . [AMENDED] 2268
165:25-2-33. . . . . [AMENDED] 2268
165:25-2-39. . . . . [AMENDED] 2268
165:25-2-40. . . . . [AMENDED] 2269
165:25-2-42. . . . . [AMENDED] 2269
165:25-2-51. . . . . [AMENDED] 2269
165:25-2-53.1. . . . . [NEW] 2270
165:25-2-54. . . . . [AMENDED AND RENUMBERED TO 165:25-2-55.1] 2270
165:25-2-55. . . . . [REVOKED] 2270
165:25-2-55.1. . . . . [NEW] 2271
165:25-2-72. . . . . [AMENDED] 2271
165:25-2-77. . . . . [AMENDED AND RENUMBERED TO 165:25-2-91] 2271
165:25-2-91. . . . . [NEW] 2272
165:25-2-111. . . . . [NEW] 2272
165:25-2-131. . . . . [NEW] 2272
165:25-2-132. . . . . [NEW] 2272
165:25-2-133. . . . . [NEW] 2272
165:25-2-134. . . . . [NEW] 2273
165:25-2-135. . . . . [NEW] 2273
165:25-2-136. . . . . [NEW] 2273
165:25-2-137. . . . . [NEW] 2273
165:25-2-138. . . . . [NEW] 2273
165:25-3-5. . . . . [AMENDED AND RENUMBERED TO 165:25-3-6.20] 2274
165:25-3-5.1. . . . . [RENUMBERED TO 165:25-3-6.21] 2274
165:25-3-5.2. . . . . [AMENDED AND RENUMBERED TO 165:25-3-6.22] 2274
165:25-3-5.3. . . . . [AMENDED AND RENUMBERED TO 165:25-3-6.23] 2275
165:25-3-5.4. . . . . [AMENDED AND RENUMBERED TO 165:25-3-6.24] 2276
165:25-3-5.5. . . . . [AMENDED AND RENUMBERED TO 165:25-3-6.25] 2277
165:25-3-5.6. . . . . [RENUMBERED TO 165:25-3-6.26] 2277
165:25-3-5.7. . . . . [AMENDED AND RENUMBERED TO 165:25-3-6.27] 2277
165:25-3-6. . . . . [AMENDED] (E) 139
165:25-3-6. . . . . [AMENDED AND RENUMBERED TO 165:25-3-6.29] 2278
165:25-3-6.1. . . . . [RENUMBERED TO 165:25-3-6.30] 2278
165:25-3-6.20. . . . . [NEW] 2279
165:25-3-6.21. . . . . [NEW] 2279
165:25-3-6.22. . . . . [NEW] 2279
165:25-3-6.23. . . . . [NEW] 2279
165:25-3-6.24. . . . . [NEW] 2280
165:25-3-6.25. . . . . [NEW] 2281
165:25-3-6.26. . . . . [NEW] 2282
165:25-3-6.27. . . . . [NEW] 2282
165:25-3-6.28. . . . . [NEW] 2282
165:25-3-6.29. . . . . [NEW] 2283
165:25-3-6.30. . . . . [NEW] 2284
165:25-3-8. . . . . [AMENDED] 2284
165:25-3-50. . . . . [REVOKED] 2285
165:25-3-51. . . . . [REVOKED] 2285
165:25-3-52. . . . . [REVOKED] 2286
165:25-3-55. . . . . [REVOKED] 2286
165:25-3-60. . . . . [REVOKED] 2286
165:25-3-61. . . . . [REVOKED] 2287
165:25-3-62. . . . . [REVOKED] 2287
165:25-3-63. . . . . [REVOKED] 2287
165:25-3-64. . . . . [REVOKED] 2287
165:25-3-64.1. . . . . [REVOKED] 2287
165:25-3-65. . . . . [REVOKED] 2287
165:25-3-66. . . . . [REVOKED] 2288
165:25-3-67. . . . . [REVOKED] 2288
165:25-5-2. . . . . [AMENDED] 2288
165:25-6-1. . . . . [AMENDED] 2288
165:25-6-36. . . . . [REVOKED] 2289
165:25-8-1. . . . . [AMENDED] (E) 140
165:25-8-1. . . . . [AMENDED] 2289
165:25-8-2. . . . . [NEW] (E) 140
165:25-8-2. . . . . [NEW] 2289
165:25-8-3. . . . . [NEW] (E) 141

165:25-8-3. . . . . [NEW] 2289
165:25-8-4. . . . . [NEW] (E) 141
165:25-8-4. . . . . [NEW] 2289
165:25-8-5. . . . . [REVOKED] (E) 141
165:25-8-5. . . . . [REVOKED] 2290
165:25-8-7. . . . . [REVOKED] (E) 142
165:25-8-7. . . . . [REVOKED] 2290
165:25-8-8. . . . . [REVOKED] (E) 142
165:25-8-8. . . . . [REVOKED] 2291
165:25-8-14. . . . . [AMENDED] (E) 143
165:25-8-14. . . . . [AMENDED] 2292
165:25-8-15. . . . . [AMENDED] (E) 143
165:25-8-15. . . . . [AMENDED] 2292
165:25-8-29. . . . . [AMENDED] (E) 143
165:25-8-29. . . . . [AMENDED] 2292
165:25-8-35. . . . . [AMENDED] (E) 143
165:25-8-35. . . . . [AMENDED] 2292
165:25-8-36. . . . . [AMENDED] (E) 144
165:25-8-36. . . . . [AMENDED] 2292
165:25-14-1. . . . . [AMENDED] 2292
165:25-18-19. . . . . [AMENDED] 2293
165:25, App. S. . . . . [REVOKED] 2294
165:25, App. S. . . . . [NEW] 2294
165:26-1-23. . . . . [RENUMBERED TO 165:26-1-25.1] 2298
165:26-1-24. . . . . [RENUMBERED TO 165:26-1-32] 2298
165:26-1-25. . . . . [RENUMBERED TO 165:26-1-33] 2298
165:26-1-25.1. . . . . [NEW] 2298
165:26-1-29. . . . . [AMENDED] 2298
165:26-1-30.3. . . . . [AMENDED] 2298
165:26-1-30.4. . . . . [RENUMBERED TO 165:26-1-70] 2298
165:26-1-31. . . . . [AMENDED] (E) 145
165:26-1-31. . . . . [NEW] 2264
165:26-1-31. . . . . [AMENDED] 2298
165:26-1-32. . . . . [NEW] 2299
165:26-1-33. . . . . [NEW] 2299
165:26-1-36. . . . . [NEW] 2299
165:26-1-37. . . . . [NEW] 2300
165:26-1-41. . . . . [AMENDED] 2300
165:26-1-48. . . . . [NEW] 2300
165:26-1-55. . . . . [NEW] 2300
165:26-1-56. . . . . [NEW] 2300
165:26-1-57. . . . . [NEW] 2300
165:26-1-58. . . . . [NEW] 2301
165:26-1-59. . . . . [NEW] 2301
165:26-1-60. . . . . [NEW] 2301
165:26-1-61. . . . . [NEW] 2301
165:26-1-70. . . . . [NEW] 2301
165:26-2-1. . . . . [RENUMBERED TO 165:26-2-1.3] 2301
165:26-2-1.1. . . . . [NEW] 2302
165:26-2-1.2. . . . . [NEW] (E) 146
165:26-2-1.2. . . . . [NEW] 2302
165:26-2-1.3. . . . . [NEW] 2302
165:26-2-5. . . . . [AMENDED] (E) 146
165:26-2-5. . . . . [AMENDED] 2302
165:26-2-5.1. . . . . [NEW] 2302
165:26-2-8. . . . . [NEW] 2303
165:26-2-32. . . . . [AMENDED] (E) 146
165:26-2-32. . . . . [AMENDED] 2303
165:26-2-32.1. . . . . [NEW] 2303
165:26-2-40. . . . . [NEW] 2304
165:26-2-41. . . . . [NEW] 2304
165:26-2-42. . . . . [NEW] 2304
165:26-2-53. . . . . [AMENDED] 2304
165:26-2-54. . . . . [AMENDED] (E) 146
165:26-2-54. . . . . [AMENDED] 2304
165:26-2-55. . . . . [AMENDED] (E) 147
165:26-2-55. . . . . [AMENDED] 2305
165:26-2-56. . . . . [AMENDED] (E) 147
165:26-2-56. . . . . [AMENDED AND RENUMBERED TO 165:26-3-20.2] 2305
165:26-2-57. . . . . [RENUMBERED TO 165:26-3-20.3] 2306
165:26-2-131. . . . . [AMENDED] (E) 148
165:26-2-131. . . . . [AMENDED] 2306
165:26-2-134. . . . . [AMENDED] (E) 148
165:26-2-134. . . . . [AMENDED AND RENUMBERED TO 165:26-3-20.1] 2307
165:26-2-151. . . . . [AMENDED] 2307
165:26-2-171. . . . . [AMENDED] (E) 149
165:26-2-171. . . . . [AMENDED AND RENUMBERED TO 165:26-2-8] 2307
165:26-2-172. . . . . [RENUMBERED TO 165:26-2-1.2] 2308
165:26-2-210. . . . . [NEW] 2308
165:26-2-212.1. . . . . [NEW] 2308
165:26-2-215. . . . . [RENUMBERED TO 165:26-2-212.1] 2308
165:26-3-11. . . . . [RENUMBERED TO 165:26-1-55] 2308
165:26-3-12. . . . . [AMENDED AND RENUMBERED TO 165:26-1-56] 2309
165:26-3-13. . . . . [AMENDED AND RENUMBERED TO 165:26-1-57] 2309
165:26-3-14. . . . . [RENUMBERED TO 165:26-1-58] 2309
165:26-3-15. . . . . [RENUMBERED TO 165:26-1-59] 2309
165:26-3-16. . . . . [AMENDED AND RENUMBERED TO 165:26-1-60] 2309
165:26-3-17. . . . . [RENUMBERED TO 165:26-1-48] 2310
165:26-3-18. . . . . [RENUMBERED TO 165:26-1-61] 2310
165:26-3-19. . . . . [NEW] 2310
165:26-3-20. . . . . [NEW] 2310
165:26-3-20.1. . . . . [NEW] 2310
165:26-3-20.2. . . . . [NEW] 2311
165:26-3-20.3. . . . . [NEW] 2312
165:26-3-21. . . . . [AMENDED] (E) 149
165:26-3-21. . . . . [AMENDED AND RENUMBERED TO 165:26-2-5.1] 2312
165:26-3-22. . . . . [RENUMBERED TO 165:26-2-32.1] 2312
165:26-3-77. . . . . [NEW] 2312
165:26-3-80. . . . . [RENUMBERED TO 165:26-2-40] 2313
165:26-3-81. . . . . [RENUMBERED TO 165:26-2-41] 2314
165:26-3-82. . . . . [RENUMBERED TO 165:26-2-42] 2314
165:26-3-191. . . . . [RENUMBERED TO 165:26-3-77] 2314
165:26-4-10. . . . . [RENUMBERED TO 165:26-4-10] 2315
165:26-4-21. . . . . [NEW] 2315
165:26-6-2. . . . . [AMENDED] 2316
165:26-8-2. . . . . [AMENDED] (E) 150
165:26-8-2. . . . . [AMENDED] 2316
165:26-8-2.1. . . . . [NEW] (E) 150

165:26-8-2.1. . . . . [NEW] 2316
165:26-8-40. . . . . [REVOKED] (E) 150
165:26-8-40. . . . . [REVOKED] 2316
165:26-8-40.1. . . . . [NEW] (E) 151
165:26-8-40.1. . . . . [NEW] 2317
165:26-8-40.2. . . . . [NEW] (E) 151
165:26-8-40.2. . . . . [NEW] 2318
165:26-8-41. . . . . [REVOKED] (E) 151
165:26-8-41. . . . . [REVOKED] 2317
165:26-8-61. . . . . [AMENDED] (E) 152
165:26-8-61. . . . . [AMENDED] 2318
165:26-8-62. . . . . [AMENDED] (E) 152
165:26-8-62. . . . . [AMENDED] 2318
165:26-8-80. . . . . [AMENDED] (E) 152
165:26-8-80. . . . . [AMENDED] 2318
165:26-8-86. . . . . [AMENDED] (E) 153
165:26-8-86. . . . . [AMENDED] 2319
165:26-8-88. . . . . [AMENDED] (E) 153
165:26-8-88. . . . . [AMENDED] 2319
165:26-10-2. . . . . [AMENDED] 2319
165:26-12-2. . . . . [AMENDED] 2319
165:26-14-2. . . . . [AMENDED] 2320
165:26-16-2. . . . . [AMENDED] 2320
165:26-18-1. . . . . [RENUMBERED TO 165:26-1-36] 2320
165:26-18-3. . . . . [RENUMBERED TO 165:26-1-37] 2320
165:26, App. G. . . . . [REVOKED] 2321
165:26, App. G. . . . . [NEW] 2321
165:27-1-2. . . . . [AMENDED] 1661
165:27-1-4. . . . . [AMENDED] 1662
165:27-5-2. . . . . [AMENDED] 1662
165:27-5-3. . . . . [AMENDED] 1663
165:27-7-2. . . . . [AMENDED] 1663
165:27-7-2.1. . . . . [REVOKED] 1663
165:27-7-6. . . . . [AMENDED] 1664
165:27-7-7. . . . . [AMENDED] 1664
165:27-7-11. . . . . [AMENDED] 1664
165:27-9-1. . . . . [AMENDED] 1665
165:27-9-3. . . . . [AMENDED] 1665
165:30-1-2. . . . . [AMENDED] 2326
165:30-3-1. . . . . [AMENDED] (E) 510
165:30-3-1. . . . . [AMENDED] 2327
165:30-3-3. . . . . [AMENDED] (E) 511
165:30-3-3. . . . . [AMENDED] 2328
165:30-3-17. . . . . [AMENDED] 2329
165:30-3-76. . . . . [AMENDED] 2329
165:30-3-92. . . . . [AMENDED] 2331
165:30-3-103. . . . . [AMENDED] (E) 511
165:30-3-103. . . . . [AMENDED] 2332
165:30-7-2. . . . . [AMENDED] (E) 512
165:30-7-2. . . . . [AMENDED] 2332
165:30-7-5. . . . . [AMENDED] 2332
165:30-7-6. . . . . [AMENDED] 2334
165:30-7-8. . . . . [AMENDED] (E) 512
165:30-7-8. . . . . [AMENDED] 2334
165:30-9-1. . . . . [AMENDED] (E) 512
165:30-9-1. . . . . [AMENDED] 2334
165:30-9-6. . . . . [AMENDED] 2335
165:30-15-4. . . . . [AMENDED] (E) 513
165:30-15-4. . . . . [AMENDED] 2335
165:30-15-5. . . . . [AMENDED] (E) 514
165:30-15-5. . . . . [AMENDED] 2336
165:30-16-1. . . . . [NEW] (E) 514
165:30-16-1. . . . . [NEW] 2336
165:30-16-2. . . . . [NEW] (E) 514
165:30-16-2. . . . . [NEW] 2337
165:30-16-3. . . . . [NEW] (E) 514
165:30-16-3. . . . . [NEW] 2337
165:30-16-4. . . . . [NEW] (E) 515
165:30-16-4. . . . . [NEW] 2337
165:30-16-5. . . . . [NEW] (E) 515
165:30-16-5. . . . . [NEW] 2337
165:30-16-6. . . . . [NEW] (E) 515
165:30-16-6. . . . . [NEW] 2337
165:30-16-7. . . . . [NEW] (E) 515
165:30-16-7. . . . . [NEW] 2337
165:30-16-8. . . . . [NEW] (E) 515
165:30-16-8. . . . . [NEW] 2337
165:30-16-9. . . . . [NEW] (E) 515
165:30-16-9. . . . . [NEW] 2337
165:30-19-1. . . . . [AMENDED] 2337
165:30-19-2. . . . . [AMENDED] 2337
165:30-19-3. . . . . [AMENDED] 2338
165:30-19-4. . . . . [AMENDED] 2338
165:30-19-5. . . . . [AMENDED] 2339
165:30-19-6. . . . . [AMENDED] 2339
165:30-19-11. . . . . [AMENDED] 2340
165:30-19-13. . . . . [AMENDED] 2340
165:30-19-14. . . . . [AMENDED] 2340
165:30-19-15. . . . . [AMENDED] 2340
165:30-19-16. . . . . [AMENDED] 2340
165:30-19-17. . . . . [AMENDED] 2341
165:30-19-18. . . . . [AMENDED] 2342
165:30-19-19. . . . . [NEW] 2342
165:30-21-1. . . . . [NEW] (E) 515
165:30-21-1. . . . . [NEW] 2342
165:30-21-2. . . . . [NEW] 2342
165:30-21-3. . . . . [NEW] 2343
165:30-21-4. . . . . [NEW] 2343
165:30-21-5. . . . . [NEW] 2343
165:30-21-6. . . . . [NEW] 2343
165:30-21-7. . . . . [NEW] 2343
165:30-21-8. . . . . [NEW] 2344
165:30-21-9. . . . . [NEW] 2344
165:30-21-10. . . . . [NEW] 2344
165:30-21-11. . . . . [NEW] 2344
165:30-21-12. . . . . [NEW] 2344
165:30-21-13. . . . . [NEW] 2344
165:30-21-14. . . . . [NEW] 2344
165:30-21-15. . . . . [NEW] 2345
165:30-21-16. . . . . [NEW] 2345
165:30-21-17. . . . . [NEW] 2345
165:35-1-2. . . . . [AMENDED] (E) 701
165:35-1-2. . . . . [AMENDED] 1666
165:35-19-4. . . . . [AMENDED] 1674
165:35-19-40. . . . . [AMENDED] 1675
165:35-21-10. . . . . [AMENDED] 1675
165:35-21-40. . . . . [AMENDED] 1677
165:35-34-1. . . . . [NEW] (E) 703
165:35-34-1. . . . . [NEW] 1668
165:35-34-2. . . . . [NEW] (E) 703
165:35-34-2. . . . . [NEW] 1668
165:35-34-3. . . . . [NEW] (E) 703
165:35-34-3. . . . . [NEW] 1669
165:35-35-1. . . . . [NEW] (E) 705
165:35-35-1. . . . . [NEW] 1670
165:35-37-1. . . . . [NEW] (E) 705
165:35-37-1. . . . . [NEW] 1671
165:35-37-2. . . . . [NEW] (E) 706
165:35-37-2. . . . . [NEW] 1671
165:35-37-3. . . . . [NEW] (E) 706
165:35-37-3. . . . . [NEW] 1671
165:35-37-4. . . . . [NEW] (E) 706

165:35-37-4. . . . . [NEW] 1671
165:35-38-1. . . . . [NEW] (E) 707
165:35-38-1. . . . . [NEW] 1672
165:35-38-2. . . . . [NEW] (E) 707
165:35-38-2. . . . . [NEW] 1672
165:35-38-3. . . . . [NEW] (E) 707
165:35-38-3. . . . . [NEW] 1672
165:35-38-4. . . . . [NEW] (E) 707
165:35-38-4. . . . . [NEW] 1673
165:35-38-5. . . . . [NEW] (E) 708
165:35-38-5. . . . . [NEW] 1673
165:45-9-2.1. . . . . [AMENDED] 1678
165:45-11-14. . . . . [AMENDED] 1678
165:45-11-20. . . . . [AMENDED] 1680
165:65-9-2.1. . . . . [NEW] 1681
195:3-1-1.1. . . . . [AMENDED] 1221
195:3-1-2. . . . . [AMENDED] 1221
195:3-1-3. . . . . [REVOKED] 1222
195:3-1-3.1. . . . . [NEW] 1222
195:3-1-4. . . . . [AMENDED] 1222
195:3-1-4.1. . . . . [AMENDED] 1223
195:3-1-4.2. . . . . [AMENDED] 1223
195:3-1-5. . . . . [AMENDED] 1223
195:3-1-5.1. . . . . [AMENDED] 1223
195:3-1-6. . . . . [AMENDED] 1224
195:3-1-7. . . . . [AMENDED] 1224
195:3-1-8. . . . . [AMENDED] 1224
195:10-9-2. . . . . [AMENDED] 1225
195:10-11-5. . . . . [AMENDED] 1226
195:10-11-6. . . . . [AMENDED] 1226
195:10-11-7. . . . . [AMENDED] 1227
195:10-11-9. . . . . [AMENDED] 1227
195:10-11-10. . . . . [AMENDED] 1227
195:25-1-2. . . . . [AMENDED] 1228
195:25-1-7. . . . . [AMENDED] 1229
195:25-1-8. . . . . [AMENDED] 1229
195:25-1-9. . . . . [NEW] 1229
210:10-13-18. . . . . [AMENDED] 1230
210:15-3-22. . . . . [AMENDED] (E) 61
210:15-3-22. . . . . [AMENDED] 1682
210:15-3-23. . . . . [AMENDED] (E) 65
210:15-3-23. . . . . [AMENDED] 1686
210:15-8-1. . . . . [NEW] (E) 70
210:15-8-1. . . . . [NEW] 1233
210:15-8-2. . . . . [NEW] (E) 70
210:15-8-2. . . . . [NEW] 1233
210:15-27-1. . . . . [AMENDED] (E) 70
210:15-27-1. . . . . [AMENDED] 1233
210:15-31-1. . . . . [NEW] (E) 153
210:15-31-1. . . . . [NEW] 1691
210:15-31-2. . . . . [NEW] (E) 153
210:15-31-2. . . . . [NEW] 1691
210:20-9-172. . . . . [AMENDED] (E) 358
210:20-9-172. . . . . [AMENDED] 1235
210:20-9-182. . . . . [AMENDED] 1271
210:20-9-188. . . . . [RESERVED] (E) 72
210:20-9-189. . . . . [NEW] 1272
210:20-17-3. . . . . [AMENDED] (E) 72
210:20-17-3. . . . . [AMENDED] 1273
210:20-19-2. . . . . [AMENDED] (E) 154
210:20-19-2. . . . . [AMENDED] 1692
210:20-19-3. . . . . [AMENDED] (E) 155
210:20-19-3. . . . . [AMENDED] 1692
210:20-19-4. . . . . [AMENDED] (E) 155
210:20-19-4. . . . . [AMENDED] 1693
210:20-26-1. . . . . [NEW] (E) 73
210:20-26-1. . . . . [NEW] 1274
210:20-26-2. . . . . [NEW] (E) 73
210:20-26-2. . . . . [NEW] 1274
210:20-26-3. . . . . [NEW] (E) 73
210:20-26-3. . . . . [NEW] 1274
210:35-3-186. . . . . [AMENDED] (E) 47
210:35-3-186. . . . . [AMENDED] 1694
210:35-7-43. . . . . [AMENDED] (E) 661
210:35-7-43. . . . . [AMENDED] 1695
210:35-9-31. . . . . [AMENDED] (E) 74
210:35-9-31. . . . . [AMENDED] (E) 1615
210:35-9-31. . . . . [AMENDED] 1696
210:35-9-43. . . . . [AMENDED] (E) 661
210:35-9-43. . . . . [AMENDED] 1696
230:10-3-6. . . . . [AMENDED] 1275
230:10-3-8. . . . . [AMENDED] (E) 76
230:10-3-8. . . . . [AMENDED] 1275
230:10-3-28.1. . . . . [AMENDED] (E) 76
230:10-3-28.1. . . . . [AMENDED] 1275
230:10-3-33. . . . . [AMENDED] (E) 77
230:10-3-33. . . . . [AMENDED] 1276
230:10-3-34. . . . . [AMENDED] (E) 77
230:10-3-34. . . . . [AMENDED] 1276
230:10-3-35. . . . . [AMENDED] (E) 77
230:10-3-35. . . . . [AMENDED] 1276
230:10-7-3. . . . . [AMENDED] 1276
230:10-7-4. . . . . [AMENDED] 1277
230:10-7-14. . . . . [AMENDED] 1277
230:10-7-43. . . . . [AMENDED] 1277
230:10-7-45. . . . . [AMENDED] 1277
230:10-7-66.1. . . . . [AMENDED] 1278
230:10-7-74. . . . . [AMENDED] 1278
230:10-7-82. . . . . [AMENDED] 1278
230:10-7-85. . . . . [AMENDED] 1279
230:15-1-2. . . . . [AMENDED] 1280
230:15-3-23. . . . . [AMENDED] 1280
230:15-5-36. . . . . [AMENDED] 1281
230:15-5-77. . . . . [AMENDED] 1282
230:15-9-18. . . . . [AMENDED] 1282
230:15-9-20. . . . . [AMENDED] 1283
230:15-9-24. . . . . [AMENDED] 1283
230:15-9-25. . . . . [AMENDED] 1284
230:15-11-5. . . . . [AMENDED] (E) 78
230:15-11-5. . . . . [AMENDED] 1285
230:30-1-2. . . . . [AMENDED] 1286
230:30-7-6.1. . . . . [AMENDED] 1286
230:30-7-7. . . . . [AMENDED] 1286
230:30-7-11. . . . . [AMENDED] 1287
230:30-7-13. . . . . [AMENDED] (E) 78
230:30-7-13. . . . . [AMENDED] 1287
230:30-7-14. . . . . [AMENDED] 1288
230:30-7-16. . . . . [NEW] 1288
230:30-9-3. . . . . [AMENDED] 1288
230:30-9-6. . . . . [AMENDED] 1289
230:30-11-6.1. . . . . [AMENDED] (E) 79
230:30-11-6.1. . . . . [AMENDED] 1289
230:35-1-2. . . . . [NEW] 1291
230:35-3-3. . . . . [AMENDED] (E) 80
230:35-3-3. . . . . [AMENDED] 1291
230:35-3-30. . . . . [AMENDED] (E) 81
230:35-3-30. . . . . [AMENDED] 1292
230:35-3-40. . . . . [AMENDED] 1293
230:35-3-68. . . . . [AMENDED] 1293
230:35-3-84.1. . . . . [AMENDED] 1294
230:35-3-86. . . . . [AMENDED] 1294
230:35-3-87. . . . . [AMENDED] 1294
230:35-3-91. . . . . [AMENDED] (E) 82
230:35-3-91. . . . . [AMENDED] 1295

230:35-3-125.1. [NEW] 1296
230:35-3-126. [AMENDED] 1296
230:35-3-130. [AMENDED] (E) 83
230:35-3-130. [AMENDED] 1296
230:35-3-131. [AMENDED] (E) 84
230:35-3-131. [AMENDED] 1296
230:35-3-132. [AMENDED] 1297
230:35-5-28. [AMENDED] 1297
230:35-5-31.1. [AMENDED] 1298
230:35-5-76. [AMENDED] 1298
230:35-5-113.2. [AMENDED] 1298
230:35-5-175. [AMENDED] (E) 84
230:35-5-175. [AMENDED] 1299
230:35-5-176. [AMENDED] (E) 85
230:35-5-176. [AMENDED] 1299
230:35-5-177. [AMENDED] (E) 85
230:35-5-177. [AMENDED] 1300
230:35-9-7. [AMENDED] (E) 86
230:35-9-7. [AMENDED] 1301
230:35-9-9. [AMENDED] 1301
230:40-1-1. [AMENDED] 1302
230:40-3-1.1. [AMENDED] (E) 87
230:40-3-1.1. [AMENDED] 1302
230:40-5-5. [AMENDED] (E) 87
230:40-5-5. [AMENDED] 1302
230:40-5-18. [AMENDED] (E) 555
230:40-5-18. [AMENDED] 1303
230:40-5-46. [AMENDED] (E) 556
230:40-5-46. [AMENDED] 1303
230:40-5-46.1. [NEW] (E) 556
230:40-5-46.1. [NEW] 1304
230:40-5-60. [AMENDED] 1304
230:40-5-65. [AMENDED] 1304
230:40-5-77. [AMENDED] 1305
230:40-7-4. [NEW] (E) 88
230:40-7-4. [NEW] 1305
230:40-7-29. [AMENDED] 1305
230:40-7-106. [AMENDED] 1305
230:40-7-107. [AMENDED] 1306
230:45-3-5. [AMENDED] 1306
230:45-3-9. [AMENDED] 1306
230:45-3-10. [AMENDED] 1306
230:45-3-39. [AMENDED] 1307
235:10-3-1. [AMENDED] 884
240:1-1-4. [AMENDED] 885
240:1-3-5. [AMENDED] 885
240:1-3-6. [AMENDED] 885
240:10-3-12. [NEW] 886
240:10-3-20. [AMENDED] 886
240:10-3-24. [AMENDED] 887
240:10-3-44. [REVOKED] 889
240:10-5-2. [AMENDED] 888
240:10-5-11. [AMENDED] 888
240:10-5-12. [AMENDED] 888
240:21-1-1. [AMENDED] 890
240:21-1-2. [AMENDED] 890
240:21-1-3. [AMENDED] 890
240:21-3-1. [AMENDED] 890
240:21-3-2. [AMENDED] 891
240:21-5-2. [AMENDED] 891
240:21-5-3. [AMENDED] 891
240:21-7-2. [AMENDED] 891
240:21-7-3. [AMENDED] 891
240:21-7-5. [AMENDED] 892
240:21-9-1. [AMENDED] 892
240:21-9-2. [AMENDED] 892
240:21-11-1. [AMENDED] 892
240:21-11-10. [AMENDED] 892
240:21-11-12. [AMENDED] 892
240:21-11-13. [AMENDED] 893
240:21-11-21. [AMENDED] 893
240:21-11-22. [AMENDED] 893
240:21-11-30. [AMENDED] 893
240:21-11-31. [AMENDED] 893
245:2-1-1. [AMENDED] 894
245:2-1-4. [AMENDED] 894
245:2-1-5. [AMENDED] 894
245:2-1-6. [AMENDED] 894
245:2-1-7. [AMENDED] 894
245:2-1-9. [AMENDED] 895
245:2-1-10. [AMENDED] 895
245:2-1-11. [AMENDED] 895
245:2-1-18. [AMENDED] 895
245:15-1-1. [AMENDED] 897
245:15-1-3. [AMENDED] 897
245:15-1-4. [AMENDED] 899
245:15-3-2. [AMENDED] 899
245:15-3-3. [AMENDED] 899
245:15-3-4. [AMENDED] 899
245:15-3-5. [AMENDED] 899
245:15-3-6. [AMENDED] 900
245:15-3-7. [AMENDED] 900
245:15-3-8. [AMENDED] 902
245:15-3-9. [AMENDED] 904
245:15-3-10. [AMENDED] 904
245:15-5-1. [AMENDED] 904
245:15-5-2. [AMENDED] 904
245:15-5-4. [AMENDED] 905
245:15-5-5. [AMENDED] 906
245:15-5-6. [REVOKED] 906
245:15-5-7. [AMENDED] 906
245:15-7-1. [AMENDED] 906
245:15-7-2. [AMENDED] 906
245:15-7-3. [AMENDED] 906
245:15-7-4. [AMENDED] 907
245:15-7-5. [AMENDED] 907
245:15-9-1. [AMENDED] 907
245:15-9-3. [AMENDED] 907
245:15-9-4. [AMENDED] 907
245:15-9-5. [AMENDED] 908
245:15-9-6. [AMENDED] 908
245:15-9-7. [AMENDED] 908
245:15-11-1. [AMENDED] 908
245:15-11-2. [AMENDED] 908
245:15-11-3. [AMENDED] 909
245:15-11-5. [AMENDED] 909
245:15-11-6. [AMENDED] 910
245:15-11-7. [AMENDED] 910
245:15-11-8. [AMENDED] 910
245:15-11-9. [AMENDED] 910
245:15-11-10. [AMENDED] 910
245:15-11-11. [AMENDED] 910
245:15-11-12. [AMENDED] 910
245:15-11-13. [AMENDED] 911
245:15-13-2. [AMENDED] 911
245:15-13-3. [AMENDED] 913
245:15-15-1. [AMENDED] 913
245:15-15-2. [AMENDED] 913
245:15-15-3. [AMENDED] 913
245:15-17-1. [AMENDED] 914
245:15-17-2. [AMENDED] 914
245:15-19-2. [AMENDED] 915
245:15-19-3. [AMENDED] 916
245:15-19-4. [AMENDED] 916

245:15-19-5. . . . . [AMENDED] 916
245:15-19-6. . . . . [AMENDED] 916
245:15-19-7. . . . . [AMENDED] 916
245:15-19-8. . . . . [AMENDED] 916
245:15-21-1. . . . . [AMENDED] 917
245:15-21-3. . . . . [AMENDED] 917
245:15-21-6. . . . . [AMENDED] 917
245:15-23-1. . . . . [AMENDED] 917
245:15-23-2. . . . . [AMENDED] 918
245:15-23-3. . . . . [AMENDED] 918
245:15-23-4. . . . . [AMENDED] 918
245:15-23-5. . . . . [AMENDED] 918
245:15-23-6. . . . . [AMENDED] 919
245:15-23-7. . . . . [AMENDED] 919
245:15-23-8. . . . . [AMENDED] 920
245:15-23-9. . . . . [AMENDED] 920
245:15-23-10. . . . . [AMENDED] 920
245:15-23-11. . . . . [AMENDED] 920
245:15-23-12. . . . . [AMENDED] 920
245:15-23-13. . . . . [AMENDED] 920
245:15-23-14. . . . . [AMENDED] 920
245:15-23-15. . . . . [AMENDED] 921
245:15-23-16. . . . . [AMENDED] 921
245:15-23-17. . . . . [AMENDED] 921
245:15-23-18. . . . . [AMENDED] 921
245:15-23-21. . . . . [AMENDED] 922
245:15-23-22. . . . . [AMENDED] 922
245:15-23-23. . . . . [AMENDED] 922
245:15-23-24. . . . . [AMENDED] 922
245:15-23-25. . . . . [AMENDED] 922
252:20-1-3. . . . . [AMENDED] 1698
252:20-1-4. . . . . [AMENDED] 1699
252:20-1-6. . . . . [AMENDED] 1699
252:20-1-7. . . . . [AMENDED] 1699
252:100-1-3. . . . . [AMENDED] 1700
252:100-4-5. . . . . [AMENDED] 1731
252:100-8-1.1. . . . . [AMENDED] 1704
252:100-8-2. . . . . [AMENDED] 1706
252:100-8-30. . . . . [AMENDED] 1709
252:100-8-31. . . . . [AMENDED] 1710
252:100-8-32. . . . . [REVOKED] 1717
252:100-8-32.1. . . . . [NEW] 1718
252:100-8-32.2. . . . . [NEW] 1718
252:100-8-32.3. . . . . [NEW] 1718
252:100-8-33. . . . . [AMENDED] 1718
252:100-8-34. . . . . [AMENDED] 1720
252:100-8-35. . . . . [AMENDED] 1720
252:100-8-35.1. . . . . [NEW] 1722
252:100-8-35.2. . . . . [NEW] 1723
252:100-8-36. . . . . [AMENDED] 1723
252:100-8-36.1. . . . . [NEW] 1723
252:100-8-36.2. . . . . [NEW] 1723
252:100-8-37. . . . . [AMENDED] 1724
252:100-8-38. . . . . [NEW] 1725
252:100-8-39. . . . . [NEW] 1725
252:100-8-50. . . . . [AMENDED] 1725
252:100-8-50.1. . . . . [NEW] 1726
252:100-8-51. . . . . [AMENDED] 1726
252:100-8-51.1. . . . . [NEW] 1728
252:100-8-52. . . . . [AMENDED] 1728
252:100-8-53. . . . . [AMENDED] 1729
252:100-8-54. . . . . [AMENDED] 1729
252:100-8-55. . . . . [NEW] 1730
252:100-8-56. . . . . [NEW] 1730
252:100-8-57. . . . . [NEW] 1730
252:100-41-1.1. . . . . [NEW] (E) 18
252:100-41-1.1. . . . . [NEW] 924
252:100-41-13. . . . . [NEW] (E) 18
252:100-41-13. . . . . [NEW] 924
252:100-41-14. . . . . [NEW] (E) 18
252:100-41-14. . . . . [NEW] 924
252:100-41-15. . . . . [AMENDED] 1732
252:100-42-1. . . . . [NEW] (E) 18
252:100-42-1. . . . . [NEW] 924
252:100-42-1.1. . . . . [NEW] (E) 18
252:100-42-1.1. . . . . [NEW] 924
252:100-42-2. . . . . [NEW] (E) 18
252:100-42-2. . . . . [NEW] 924
252:100-42-3. . . . . [NEW] (E) 19
252:100-42-3. . . . . [NEW] 924
252:100-42-4. . . . . [NEW] (E) 19
252:100-42-4. . . . . [NEW] 925
252:100-42-20. . . . . [NEW] (E) 19
252:100-42-20. . . . . [NEW] 925
252:100-42-30. . . . . [NEW] (E) 19
252:100-42-30. . . . . [NEW] 925
252:100-42-31. . . . . [NEW] (E) 20
252:100-42-31. . . . . [NEW] 926
252:100-42-32. . . . . [NEW] (E) 20
252:100-42-32. . . . . [NEW] 926
252:100, App. E. . . . . [REVOKED] 929
252:100, App. E. . . . . [NEW] 929
252:100, App. F. . . . . [REVOKED] 930
252:100, App. F. . . . . [NEW] 930
252:100, App. O. . . . . [NEW] (E) 21
252:100, App. O. . . . . [NEW] 927
252:205-1-1. . . . . [AMENDED] 931
252:205-1-2. . . . . [AMENDED] 931
252:205-1-3. . . . . [AMENDED] 932
252:205-1-4. . . . . [AMENDED] 932
252:205-3-1. . . . . [AMENDED] 932
252:205-3-2. . . . . [AMENDED] 932
252:205-5-5. . . . . [AMENDED] 934
252:205-9-6. . . . . [AMENDED] 934
252:205-9-7. . . . . [REVOKED] 934
252:205-15-2. . . . . [AMENDED] 934
252:205-15-5. . . . . [AMENDED] 934
252:205-17-3. . . . . [AMENDED] 934
252:205-19-1. . . . . [AMENDED] 935
252:205-19-31. . . . . [AMENDED] 935
252:205-23-1. . . . . [AMENDED] 935
252:205, App. A. . . . . [REVOKED] 936
252:300-5-1. . . . . [AMENDED] 1733
252:300-7-3. . . . . [AMENDED] 1733
252:300-17-21. . . . . [NEW] 1734
252:300-17-22. . . . . [NEW] 1734
252:300-17-23. . . . . [NEW] 1734
252:300-17-24. . . . . [NEW] 1734
252:300-17-25. . . . . [NEW] 1734
252:300-19-2. . . . . [AMENDED] 1735
252:300-19-3. . . . . [AMENDED] 1735
252:300, App. D. . . . . [REVOKED] 1736
252:300, App. D. . . . . [NEW] 1736
252:305, App. A. . . . . [REVOKED] 1738
252:305, App. A. . . . . [NEW] 1738
252:305, App. B. . . . . [REVOKED] 1743
252:305, App. B. . . . . [NEW] 1743
252:410, App. A. . . . . [REVOKED] 1745
252:410, App. A. . . . . [NEW] 1745
252:515-1-4. . . . . [AMENDED] 1746
252:515-3-1. . . . . [AMENDED] 1751
252:515-3-35. . . . . [AMENDED] 1746
252:515-3-39.1. . . . . [NEW] 1752
252:515-3-40. . . . . [AMENDED] 1747

252:515-13-1. . . . . [AMENDED] 1747
252:515-17-3. . . . . [AMENDED] 1747
252:515-19-51. . . . . [AMENDED] 1748
252:515-19-73. . . . . [AMENDED] 1748
252:515-21-2. . . . . [AMENDED] 1752
252:515-21-3. . . . . [AMENDED] 1753
252:515-21-5. . . . . [NEW] 1753
252:515-21-31. . . . . [REVOKED] 1753
252:515-21-32. . . . . [AMENDED] 1753
252:515-21-32.1. . . . . [NEW] 1754
252:515-21-36. . . . . [NEW] 1754
252:515-21-71. . . . . [AMENDED] 1754
252:515-21-72. . . . . [AMENDED] 1754
252:515-21-73. . . . . [AMENDED] 1755
252:515-21-91. . . . . [AMENDED] 1755
252:515-21-92. . . . . [AMENDED] 1755
252:515-23-1. . . . . [AMENDED] 1748
252:515-25-54. . . . . [AMENDED] 1748
252:515-27-4. . . . . [AMENDED] 1749
252:515-27-81.1. . . . . [NEW] 1749
252:515-35-1. . . . . [AMENDED] 1749
252:515, App. B. . . . . [REVOKED] 1750
252:515, App. B. . . . . [NEW] 1750
252:515, App. H. . . . . [REVOKED] 1757
252:515, App. H. . . . . [NEW] 1757
252:515, App. I. . . . . [REVOKED] 1763
252:515, App. I. . . . . [NEW] 1763
252:606-1-4. . . . . [AMENDED] 1768
252:611-1-3. . . . . [AMENDED] 1769
252:616-3-1. . . . . [AMENDED] 1769
252:631-1-3. . . . . [AMENDED] 1770
252:656-1-1. . . . . [AMENDED] 937
252:656-1-2. . . . . [AMENDED] 937
252:656-3-1. . . . . [AMENDED] 938
252:656-3-2. . . . . [AMENDED] 938
252:656-3-4. . . . . [AMENDED] 939
252:656-3-5. . . . . [AMENDED] 939
252:656-3-6. . . . . [AMENDED] 940
252:656-3-7. . . . . [AMENDED] 940
252:656-3-9. . . . . [AMENDED] 941
252:656-5-1. . . . . [AMENDED] 941
252:656-5-2. . . . . [AMENDED] 941
252:656-5-3. . . . . [AMENDED] 943
252:656-5-4. . . . . [AMENDED] 943
252:656-5-5. . . . . [AMENDED] 944
252:656-7-1. . . . . [AMENDED] 944
252:656-7-3. . . . . [AMENDED] 946
252:656-7-4. . . . . [AMENDED] 946
252:656-9-1. . . . . [AMENDED] 948
252:656-9-2. . . . . [AMENDED] 948
252:656-9-3. . . . . [AMENDED] 949
252:656-11-1. . . . . [AMENDED] 949
252:656-11-2. . . . . [AMENDED] 949
252:656-11-3. . . . . [AMENDED] 950
252:656-11-4. . . . . [AMENDED] 952
252:656-13-1. . . . . [AMENDED] 952
252:656-13-2. . . . . [AMENDED] 953
252:656-13-3. . . . . [AMENDED] 953
252:656-13-4. . . . . [AMENDED] 953
252:656-15-1. . . . . [REVOKED] 954
252:656-15-2. . . . . [REVOKED] 956
252:656-15-3. . . . . [REVOKED] 957
252:656-16-1. . . . . [NEW] 957
252:656-16-2. . . . . [NEW] 960
252:656-16-3. . . . . [NEW] 960
252:656-17-1. . . . . [REVOKED] 962
252:656-17-2. . . . . [AMENDED] 962
252:656-19-1. . . . . [AMENDED] 962
252:656-19-1.1. . . . . [NEW] 962
252:656-19-2. . . . . [AMENDED] 962
252:656-19-3. . . . . [AMENDED] 963
252:656-19-4. . . . . [AMENDED] 964
252:656-19-5. . . . . [AMENDED] 964
252:656-19-5.1. . . . . [NEW] 964
252:656-19-6. . . . . [AMENDED] 965
252:656-21-1. . . . . [AMENDED] 965
252:656-21-2. . . . . [AMENDED] 966
252:656-21-3. . . . . [AMENDED] 967
252:656-23-1. . . . . [AMENDED] 967
252:656-23-2. . . . . [AMENDED] 968
252:656-23-3. . . . . [AMENDED] 968
252:656-25-2. . . . . [AMENDED] 968
252:656, App. A. . . . . [REVOKED] 970
252:656, App. A. . . . . [NEW] 970
252:656, App. B. . . . . [REVOKED] 971
252:656, App. B. . . . . [NEW] 971
252:690-1-4. . . . . [AMENDED] 1771
252:710-3-31. . . . . [AMENDED] 1773
252:710-5-54. . . . . [AMENDED] 1774
252:710-5-59. . . . . [AMENDED] 1774
252:710, App. A. . . . . [REVOKED] 1775
252:710, App. A. . . . . [NEW] 1775
270:10-1-5. . . . . [AMENDED] (E) 22
270:10-1-5. . . . . [AMENDED] 1307
270:10-1-8. . . . . [AMENDED] 1313
300:1-1-1. . . . . [NEW] 1319
300:1-1-2. . . . . [NEW] 1319
300:1-1-3. . . . . [NEW] 1319
300:1-3-1. . . . . [NEW] 1319
300:1-3-2. . . . . [NEW] 1319
300:1-3-3. . . . . [NEW] 1320
300:1-5-1. . . . . [NEW] 1320
300:1-5-2. . . . . [NEW] 1320
300:1-5-3. . . . . [NEW] 1320
300:15-1-1. . . . . [NEW] 1321
300:15-1-2. . . . . [NEW] 1321
300:15-1-3. . . . . [NEW] 1322
300:15-3-1. . . . . [NEW] 1322
300:15-3-2. . . . . [NEW] 1322
300:15-5-1. . . . . [NEW] 1322
300:15-5-2. . . . . [NEW] 1323
300:15-5-3. . . . . [NEW] 1323
300:15-5-4. . . . . [NEW] 1323
300:20-1-1. . . . . [AMENDED] 1323
300:20-1-2. . . . . [AMENDED] 1324
300:20-1-4. . . . . [AMENDED] 1324
300:20-1-8. . . . . [AMENDED] 1325
300:20-1-11. . . . . [AMENDED] 1325
300:20-1-12. . . . . [AMENDED] 1326
300:20-1-15. . . . . [NEW] 1326
300:25-1-1. . . . . [NEW] 1327
300:25-1-2. . . . . [NEW] 1327
300:25-3-1. . . . . [NEW] 1328
300:25-3-2. . . . . [NEW] 1328
300:25-3-3. . . . . [NEW] 1328
300:25-3-4. . . . . [NEW] 1328
300:25-5-1. . . . . [NEW] 1328
300:25-5-2. . . . . [NEW] 1328
300:25-5-3. . . . . [NEW] 1328
300:25-5-4. . . . . [NEW] 1328
300:25-5-5. . . . . [NEW] 1328
300:25-5-6. . . . . [NEW] 1328
300:30-1-1. . . . . [NEW] 1329
300:30-1-2. . . . . [NEW] 1329

300:30-1-3. [NEW] 1329
300:30-1-4. [NEW] 1329
300:35-1-1. [NEW] 1330
300:35-1-2. [NEW] 1330
300:35-1-3. [NEW] 1330
300:35-1-4. [NEW] 1330
300:35-1-5. [NEW] 1330
300:35-1-6. [NEW] 1331
300:35-3-1. [NEW] 1331
300:35-3-2. [NEW] 1331
300:35-3-3. [NEW] 1331
300:35-3-4. [NEW] 1331
300:35-3-5. [NEW] 1331
300:35-3-6. [NEW] 1331
300:35-3-7. [NEW] 1331
300:35-3-8. [NEW] 1331
300:35-3-9. [NEW] 1331
300:35-3-10. [NEW] 1332
300:35-3-11. [NEW] 1332
300:35-3-12. [NEW] 1332
300:35-3-13. [NEW] 1332
300:35-5-1. [NEW] 1332
300:35-5-2. [NEW] 1332
300:35-5-3. [NEW] 1332
300:35-5-4. [NEW] 1333
300:35-5-5. [NEW] 1333
300:35-5-6. [NEW] 1333
300:35-5-7. [NEW] 1333
300:35-5-8. [NEW] 1333
300:35-5-9. [NEW] 1333
300:35-7-1. [NEW] 1333
300:35-7-2. [NEW] 1333
300:35-7-3. [NEW] 1333
300:35-7-4. [NEW] 1333
300:35-7-5. [NEW] 1333
300:35-7-6. [NEW] 1333
300:35-7-7. [NEW] 1333
300:35-7-8. [NEW] 1334
300:35-7-9. [NEW] 1334
300:35-7-10. [NEW] 1334
300:35-7-11. [NEW] 1334
300:35-7-12. [NEW] 1334
300:35-9-1. [NEW] 1334
300:35-9-2. [NEW] 1334
300:35-9-3. [NEW] 1334
300:35-11-1. [NEW] 1334
300:35-11-2. [NEW] 1335
300:35-11-3. [NEW] 1335
300:35-11-4. [NEW] 1335
300:35-11-5. [NEW] 1335
300:35-11-6. [NEW] 1335
300:35-11-7. [NEW] 1336
300:35-11-8. [NEW] 1336
300:35-11-9. [NEW] 1336
300:35-11-10. [NEW] 1336
300:35-11-11. [NEW] 1336
300:35-11-12. [NEW] 1336
300:35-13-1. [NEW] 1336
300:35-13-2. [NEW] 1337
300:35-13-3. [NEW] 1337
300:35-13-4. [NEW] 1337
300:35-13-5. [NEW] 1338
300:35-13-6. [NEW] 1338
300:35-15-1. [NEW] 1338
300:35-15-2. [NEW] 1338
300:35-15-3. [NEW] 1338
300:35-15-4. [NEW] 1338
300:35-15-5. [NEW] 1339
300:35-15-6. [NEW] 1339
300:35-15-7. [NEW] 1339
300:35-17-1. [NEW] 1339
300:35-17-2. [NEW] 1339
300:35-17-3. [NEW] 1339
300:35-17-4. [NEW] 1339
300:35-17-5. [NEW] 1340
300:35-19-1. [NEW] 1340
300:35-21-1. [NEW] 1340
300:35-21-2. [NEW] 1340
300:35-21-3. [NEW] 1340
300:35-21-4. [NEW] 1340
300:35-21-5. [NEW] 1340
300:35-21-6. [NEW] 1340
300:35-21-7. [NEW] 1340
300:35-21-8. [NEW] 1341
300:35-23-1. [NEW] 1341
300:35-23-2. [NEW] 1341
300:35-23-3. [NEW] 1341
300:35-23-4. [NEW] 1341
300:35-23-5. [NEW] 1341
300:35-23-6. [NEW] 1341
300:35-23-7. [NEW] 1341
300:35-23-8. [NEW] 1341
300:35-23-9. [NEW] 1341
300:35-23-10. [NEW] 1341
300:35-27-1. [NEW] 1341
300:35-27-2. [NEW] 1341
300:35-27-3. [NEW] 1341
300:35-27-4. [NEW] 1342
300:35-27-5. [NEW] 1342
300:35-27-6. [NEW] 1342
300:35-27-7. [NEW] 1342
301:256-7-7. [REVOKED] 2357
301:256-9-2. [REVOKED] 2357
310:110-5-6. [AMENDED] 2346
310:205-1-2. [AMENDED] 2347
310:205-3-1. [AMENDED] 2348
310:205-3-2. [AMENDED] 2349
310:205-3-3. [AMENDED] 2350
310:205-3-4. [AMENDED] 2351
310:205-3-6. [REVOKED] 2353
310:210-3-3. [AMENDED] 2353
310:210-5-8. [AMENDED] 2354
310:210, App. A. [REVOKED] 2355
310:210, App. A. [NEW] 2355
310:210, App. C. [REVOKED] 2356
310:210, App. C. [NEW] 2356
310:250-3-1. [AMENDED] 972
310:250-3-6. [AMENDED] 973
310:256-1-1. [REVOKED] 2357
310:256-1-2. [REVOKED] 2357
310:256-1-3. [REVOKED] 2357
310:256-1-4. [REVOKED] 2357
310:256-1-4. [NEW] 2358
310:256-3-1. [REVOKED] 2357
310:256-3-2. [REVOKED] 2357
310:256-3-3. [REVOKED] 2357
310:256-3-4. [REVOKED] 2357
310:256-3-5. [REVOKED] 2357
310:256-3-6. [REVOKED] 2357
310:256-3-7. [REVOKED] 2357
310:256-3-8. [REVOKED] 2357
310:256-3-9. [REVOKED] 2357
310:256-3-10. [REVOKED] 2357
310:256-3-11. [REVOKED] 2357

310:256-3-12. . . . . [REVOKED] 2357
310:256-3-13. . . . . [REVOKED] 2357
310:256-3-14. . . . . [REVOKED] 2357
310:256-3-15. . . . . [REVOKED] 2357
310:256-3-16. . . . . [REVOKED] 2357
310:256-3-17. . . . . [REVOKED] 2357
310:256-3-18. . . . . [REVOKED] 2357
310:256-3-19. . . . . [REVOKED] 2357
310:256-5-1. . . . . [REVOKED] 2357
310:256-5-2. . . . . [REVOKED] 2357
310:256-5-3. . . . . [REVOKED] 2357
310:256-5-4. . . . . [REVOKED] 2357
310:256-5-5. . . . . [REVOKED] 2357
310:256-5-6. . . . . [REVOKED] 2357
310:256-5-7. . . . . [REVOKED] 2357
310:256-5-8. . . . . [REVOKED] 2357
310:256-5-9. . . . . [REVOKED] 2357
310:256-5-10. . . . . [REVOKED] 2357
310:256-5-11. . . . . [REVOKED] 2357
310:256-5-12. . . . . [REVOKED] 2357
310:256-5-13. . . . . [REVOKED] 2357
310:256-5-14. . . . . [REVOKED] 2357
310:256-5-15. . . . . [REVOKED] 2357
310:256-5-16. . . . . [REVOKED] 2357
310:256-5-17. . . . . [REVOKED] 2357
310:256-5-18. . . . . [REVOKED] 2357
310:256-5-19. . . . . [REVOKED] 2357
310:256-5-20. . . . . [REVOKED] 2357
310:256-5-21. . . . . [REVOKED] 2357
310:256-5-22. . . . . [REVOKED] 2357
310:256-5-23. . . . . [REVOKED] 2357
310:256-5-24. . . . . [REVOKED] 2357
310:256-5-25. . . . . [REVOKED] 2357
310:256-5-26. . . . . [REVOKED] 2357
310:256-5-27. . . . . [REVOKED] 2357
310:256-5-28. . . . . [REVOKED] 2357
310:256-5-29. . . . . [REVOKED] 2357
310:256-5-30. . . . . [REVOKED] 2357
310:256-5-31. . . . . [REVOKED] 2357
310:256-5-32. . . . . [REVOKED] 2357
310:256-5-33. . . . . [REVOKED] 2357
310:256-5-34. . . . . [REVOKED] 2357
310:256-5-35. . . . . [REVOKED] 2357
310:256-5-36. . . . . [REVOKED] 2357
310:256-5-37. . . . . [REVOKED] 2357
310:256-5-38. . . . . [REVOKED] 2357
310:256-5-39. . . . . [REVOKED] 2357
310:256-5-40. . . . . [REVOKED] 2357
310:256-5-41. . . . . [REVOKED] 2357
310:256-5-42. . . . . [REVOKED] 2357
310:256-5-43. . . . . [REVOKED] 2357
310:256-5-44. . . . . [REVOKED] 2357
310:256-5-45. . . . . [REVOKED] 2357
310:256-5-46. . . . . [REVOKED] 2357
310:256-5-47. . . . . [REVOKED] 2357
310:256-5-48. . . . . [REVOKED] 2357
310:256-5-49. . . . . [REVOKED] 2357
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310:257-5-70. . . . . [NEW] 2358
310:257-5-71. . . . . [NEW] 2358
310:257-7-1. . . . . [NEW] 2358
310:257-7-2. . . . . [NEW] 2358
310:257-7-3. . . . . [NEW] 2358
310:257-7-4. . . . . [NEW] 2358
310:257-7-5. . . . . [NEW] 2358
310:257-7-6. . . . . [NEW] 2358
310:257-7-7. . . . . [NEW] 2358
310:257-7-8. . . . . [NEW] 2358
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310:257-7-10. . . . . [NEW] 2358
310:257-7-11. . . . . [NEW] 2358
310:257-7-12. . . . . [NEW] 2358
310:257-7-13. . . . . [NEW] 2358
310:257-7-14. . . . . [NEW] 2358
310:257-7-15. . . . . [NEW] 2358
310:257-7-16. . . . . [NEW] 2358
310:257-7-17. . . . . [NEW] 2358
310:257-7-18. . . . . [NEW] 2358
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310:257-7-21. . . . . [NEW] 2358
310:257-7-22. . . . . [NEW] 2358
310:257-7-23. . . . . [NEW] 2358
310:257-7-24. . . . . [NEW] 2358
310:257-7-25. . . . . [NEW] 2358
310:257-7-26. . . . . [NEW] 2358
310:257-7-27. . . . . [NEW] 2358
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310:257-7-35. . . . . [NEW] 2358
310:257-7-36. . . . . [NEW] 2358
310:257-7-37. . . . . [NEW] 2358
310:257-7-38. . . . . [NEW] 2358
310:257-7-39. . . . . [NEW] 2358
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310:257-7-41. . . . . [NEW] 2358
310:257-7-42. . . . . [NEW] 2358
310:257-7-43. . . . . [NEW] 2358
310:257-7-44. . . . . [NEW] 2358
310:257-7-45. . . . . [NEW] 2358
310:257-7-46. . . . . [NEW] 2358
310:257-7-47. . . . . [NEW] 2358
310:257-7-48. . . . . [NEW] 2358
310:257-7-49. . . . . [NEW] 2358
310:257-7-50. . . . . [NEW] 2358
310:257-7-51. . . . . [NEW] 2358
310:257-7-52. . . . . [NEW] 2358
310:257-7-53. . . . . [NEW] 2358
310:257-7-54. . . . . [NEW] 2358
310:257-7-55. . . . . [NEW] 2358
310:257-7-56. . . . . [NEW] 2358
310:257-7-57. . . . . [NEW] 2358
310:257-7-58. . . . . [NEW] 2358
310:257-7-59. . . . . [NEW] 2358
310:257-7-60. . . . . [NEW] 2358
310:257-7-61. . . . . [NEW] 2358
310:257-7-62. . . . . [NEW] 2358
310:257-7-63. . . . . [NEW] 2358
310:257-7-64. . . . . [NEW] 2358
310:257-7-65. . . . . [NEW] 2358
310:257-7-66. . . . . [NEW] 2358
310:257-7-67. . . . . [NEW] 2358
310:257-7-68. . . . . [NEW] 2358
310:257-7-69. . . . . [NEW] 2358
310:257-7-70. . . . . [NEW] 2358

310:257-7-71. ..... [NEW] 2358
310:257-7-72. ..... [NEW] 2358
310:257-7-73. ..... [NEW] 2358
310:257-7-74. ..... [NEW] 2358
310:257-7-75. ..... [NEW] 2358
310:257-7-76. ..... [NEW] 2358
310:257-7-77. ..... [NEW] 2358
310:257-7-78. ..... [NEW] 2358
310:257-7-79. ..... [NEW] 2358
310:257-7-80. ..... [NEW] 2358
310:257-7-81. ..... [NEW] 2358
310:257-7-82. ..... [NEW] 2358
310:257-7-83. ..... [NEW] 2358
310:257-7-84. ..... [NEW] 2358
310:257-7-85. ..... [NEW] 2358
310:257-7-86. ..... [NEW] 2358
310:257-7-87. ..... [NEW] 2358
310:257-7-88. ..... [NEW] 2358
310:257-7-89. ..... [NEW] 2358
310:257-7-90. ..... [NEW] 2358
310:257-7-91. ..... [NEW] 2358
310:257-7-92. ..... [NEW] 2358
310:257-7-93. ..... [NEW] 2358
310:257-7-94. ..... [NEW] 2358
310:257-7-95. ..... [NEW] 2358
310:257-7-96. ..... [NEW] 2358
310:257-7-97. ..... [NEW] 2358
310:257-7-98. ..... [NEW] 2358
310:257-7-99. ..... [NEW] 2358
310:257-7-100. ..... [NEW] 2358
310:257-7-101. ..... [NEW] 2358
310:257-7-102. ..... [NEW] 2358
310:257-7-103. ..... [NEW] 2358
310:257-7-104. ..... [NEW] 2358
310:257-7-105. ..... [NEW] 2358
310:257-7-106. ..... [NEW] 2358
310:257-7-107. ..... [NEW] 2358
310:257-7-108. ..... [NEW] 2358
310:257-7-109. ..... [NEW] 2358
310:257-9-1. ..... [NEW] 2358
310:257-9-2. ..... [NEW] 2358
310:257-9-3. ..... [NEW] 2358
310:257-9-4. ..... [NEW] 2358
310:257-9-5. ..... [NEW] 2358
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310:257-13-1. . . . . [NEW] 2358
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310:257-13-19. . . . . [NEW] 2358
310:257-15-1. . . . . [NEW] 2358
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310:257-15-3. . . . . [NEW] 2358
310:257-15-4. . . . . [NEW] 2358
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310:257-15-7. . . . . [NEW] 2358
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310:257-15-33. . . . . [NEW] 2358
310:257-15-34. . . . . [NEW] 2358
310:257-15-35. . . . . [NEW] 2358
310:257-15-36. . . . . [NEW] 2358
310:257-15-37. . . . . [NEW] 2358
310:257-15-38. . . . . [NEW] 2358
310:257-15-39. . . . . [NEW] 2358
310:257-15-40. . . . . [NEW] 2358
310:257-15-41. . . . . [NEW] 2358
310:276-1-3. . . . . [AMENDED] 2360
310:276-9-2. . . . . [AMENDED] 2362
310:355-1-1. . . . . [AMENDED] 2363
310:355-1-2. . . . . [REVOKED] 2363
310:355-1-3. . . . . [REVOKED] 2363
310:355-1-4. . . . . [REVOKED] 2363
310:355-1-5. . . . . [REVOKED] 2363
310:355-1-6. . . . . [NEW] 2363
310:355-3-1. . . . . [NEW] 2364
310:355-3-2. . . . . [NEW] 2364
310:355-3-3. . . . . [NEW] 2364
310:355-3-4. . . . . [NEW] 2364
310:355-5-1. . . . . [NEW] 2364
310:355-5-2. . . . . [NEW] 2364
310:355-5-3. . . . . [NEW] 2364
310:355-5-4. . . . . [NEW] 2364
310:355-7-1. . . . . [NEW] 2364
310:355-7-2. . . . . [NEW] 2364
310:355-9-1. . . . . [NEW] 2365
310:355-9-2. . . . . [NEW] 2365
310:355-9-3. . . . . [NEW] 2365
310:355-11-1. . . . . [NEW] 2365
310:355-11-2. . . . . [NEW] 2365
310:355-11-3. . . . . [NEW] 2365
310:355-11-4. . . . . [NEW] 2365
310:355-13-1. . . . . [NEW] 2365
310:355-13-2. . . . . [NEW] 2365
310:355-15-1. . . . . [NEW] 2365
310:355-15-2. . . . . [NEW] 2365
310:355-15-3. . . . . [NEW] 2365
310:355-17-1. . . . . [NEW] 2366
310:355-17-2. . . . . [NEW] 2366
310:355-17-3. . . . . [NEW] 2366
310:355-17-4. . . . . [NEW] 2366
310:355-19-1. . . . . [NEW] 2366
310:355-19-2. . . . . [NEW] 2366
310:355-19-3. . . . . [NEW] 2366
310:355-21-1. . . . . [NEW] 2366
310:355-21-2. . . . . [NEW] 2366
310:355-21-3. . . . . [NEW] 2366
310:355-21-4. . . . . [NEW] 2366
310:355-21-5. . . . . [NEW] 2367

310:400-5-1. . . . . [AMENDED] 2367
310:400-5-3. . . . . [AMENDED] 2368
310:400-7-2. . . . . [AMENDED] 2369
310:400-7-2.1. . . . . [AMENDED] 2370
310:400-9-1. . . . . [AMENDED] 2370
310:400-11-1. . . . . [AMENDED] 2371
310:400-11-2. . . . . [AMENDED] 2371
310:400-11-3. . . . . [AMENDED] 2371
310:400-11-4. . . . . [AMENDED] 2371
310:400-11-5. . . . . [AMENDED] 2372
310:400-15-3. . . . . [AMENDED] 2372
310:400-15-4. . . . . [AMENDED] 2372
310:400-15-5. . . . . [AMENDED] 2373
310:400-15-6. . . . . [AMENDED] 2373
310:400-15-9. . . . . [AMENDED] 2373
310:403-5-1. . . . . [AMENDED] 2374
310:403-5-2. . . . . [AMENDED] 2374
310:403-7-2. . . . . [AMENDED] 2375
310:403-7-3. . . . . [AMENDED] 2376
310:403-7-4.1. . . . . [NEW] 2377
310:403-11-6. . . . . [AMENDED] 2377
310:403-11-7. . . . . [AMENDED] 2377
310:403-11-8. . . . . [AMENDED] 2377
310:403-11-9. . . . . [AMENDED] 2378
310:403-11-10. . . . . [AMENDED] 2378
310:403-11-11. . . . . [AMENDED] 2378
310:403-15-2. . . . . [AMENDED] 2378
310:403-15-3. . . . . [AMENDED] 2379
310:403-15-4. . . . . [AMENDED] 2379
310:403-15-7. . . . . [AMENDED] 2379
310:403-19-1.1. . . . . [NEW] 2379
310:403-19-6.1. . . . . [NEW] 2379
310:403-21-3.1. . . . . [NEW] 2379
310:403-21-4. . . . . [AMENDED] 2379
310:403-25-11. . . . . [AMENDED] 2380
310:405-3-2. . . . . [AMENDED] 2380
310:405-3-3. . . . . [AMENDED] 2381
310:405-3-4.1. . . . . [NEW] 2382
310:405-7-1. . . . . [AMENDED] 2382
310:405-7-2. . . . . [AMENDED] 2382
310:405-7-4. . . . . [AMENDED] 2383
310:405-7-5. . . . . [AMENDED] 2383
310:405-7-6. . . . . [AMENDED] 2383
310:405-7-7. . . . . [AMENDED] 2383
310:405-7-8. . . . . [AMENDED] 2383
310:405-9-2. . . . . [AMENDED] 2384
310:405-11-1. . . . . [AMENDED] 2384
310:405-11-2. . . . . [AMENDED] 2384
310:405-11-5. . . . . [AMENDED] 2385
310:405-11-6. . . . . [AMENDED] 2385
310:405-11-7. . . . . [AMENDED] 2385
310:405-15-1. . . . . [AMENDED] 2385
310:405-15-4. . . . . [AMENDED] 2385
310:405-15-8. . . . . [AMENDED] 2386
310:405-17-6.2. . . . . [AMENDED] 2386
310:405-23-3. . . . . [AMENDED] 2386
310:525-3-2. . . . . [AMENDED] 1343
310:525-3-3. . . . . [AMENDED] 1343
310:525-3-4. . . . . [AMENDED] 1343
310:525-3-5. . . . . [AMENDED] 1343
310:535-1-2. . . . . [AMENDED] 1344
310:535-1-3. . . . . [AMENDED] 1346
310:641-3-1. . . . . [AMENDED] 2387
310:641-3-2. . . . . [AMENDED] 2387
310:641-3-10. . . . . [AMENDED] 2388
310:641-3-11. . . . . [AMENDED] 2389
310:641-3-13. . . . . [AMENDED] 2390
310:641-3-15. . . . . [AMENDED] 2390
310:641-3-20. . . . . [AMENDED] 2391
310:641-3-22. . . . . [AMENDED] 2391
310:641-3-23. . . . . [AMENDED] 2392
310:641-3-30. . . . . [AMENDED] 2394
310:641-3-34. . . . . [AMENDED] 2394
310:641-3-40. . . . . [AMENDED] 2394
310:641-3-41. . . . . [AMENDED] 2394
310:641-3-44. . . . . [AMENDED] 2395
310:641-3-48.4. . . . . [AMENDED] 2395
310:641-3-90. . . . . [AMENDED] 2395
310:641-3-100. . . . . [REVOKED] 2395
310:641-3-110. . . . . [AMENDED] 2395
310:641-3-150. . . . . [AMENDED] 2396
310:641-3-160. . . . . [AMENDED] 2396
310:641-3-170. . . . . [AMENDED] 2397
310:641-3-180. . . . . [REVOKED] 2397
310:641-5-1. . . . . [AMENDED] 2397
310:641-5-11. . . . . [AMENDED] 2397
310:641-5-17. . . . . [AMENDED] 2398
310:641-5-30. . . . . [AMENDED] 2399
310:641-5-61. . . . . [AMENDED] 2399
310:641-5-70. . . . . [AMENDED] 2400
310:641-7-11. . . . . [AMENDED] 2400
310:641-7-13. . . . . [AMENDED] 2401
310:641-7-15. . . . . [AMENDED] 2401
310:641-7-20. . . . . [AMENDED] 2402
310:641-7-21. . . . . [AMENDED] 2403
310:641-7-21.1. . . . . [NEW] 2403
310:641-7-30. . . . . [AMENDED] 2403
310:641-7-53. . . . . [AMENDED] 2404
310:641-7-60. . . . . [AMENDED] 2404
310:641-7-61. . . . . [AMENDED] 2404
310:657-1-2. . . . . [AMENDED] 2404
310:657-3-1. . . . . [AMENDED] 2405
310:657-3-2. . . . . [AMENDED] 2405
310:657-3-3. . . . . [AMENDED] 2405
310:657-5-3. . . . . [AMENDED] 2405
310:657-5-4. . . . . [AMENDED] 2405
310:657-7-1. . . . . [AMENDED] 2406
310:657-7-3. . . . . [AMENDED] 2406
310:657-7-4. . . . . [AMENDED] 2407
310:657-7-6. . . . . [AMENDED] 2407
310:657-7-7. . . . . [AMENDED] 2407
310:657-9-1. . . . . [AMENDED] 2407
310:657-9-3. . . . . [AMENDED] 2407
310:657-11-2. . . . . [AMENDED] 2408
310:657-13-1. . . . . [AMENDED] 2408
310:657-15-4. . . . . [REVOKED] 2408
310:657-15-5. . . . . [REVOKED] 2408
310:657-15-6. . . . . [AMENDED] 2408
310:657-15-7. . . . . [REVOKED] 2408
310:657-17-1. . . . . [AMENDED] 2408
310:657-17-2. . . . . [AMENDED] 2408
310:657-17-5. . . . . [AMENDED] 2409
310:657-17-6. . . . . [NEW] 2409
310:657-21-2. . . . . [AMENDED] 2409
310:657-21-4. . . . . [AMENDED] 2409
310:657-23-1. . . . . [AMENDED] 2410
310:657-23-2. . . . . [AMENDED] 2410
310:657-25-1. . . . . [AMENDED] 2411
310:657-25-2. . . . . [AMENDED] 2411
310:657-25-3. . . . . [AMENDED] 2411
310:657-27-1. . . . . [AMENDED] 2411
310:657-27-2. . . . . [AMENDED] 2411
310:657-29-1. . . . . [AMENDED] 2411
310:657-29-2. . . . . [AMENDED] 2411

310:657-31-1. . . . . [AMENDED] 2412
310:657-31-2. . . . . [REVOKED] 2412
310:657-31-3. . . . . [AMENDED] 2412
310:657-33-1. . . . . [AMENDED] 2412
310:657-35-1. . . . . [REVOKED] 2412
310:657-35-2. . . . . [REVOKED] 2412
310:661-1-2. . . . . [AMENDED] 2413
310:661-2-1. . . . . [AMENDED] 2414
310:661-2-2. . . . . [AMENDED] 2414
310:661-2-4. . . . . [AMENDED] 2415
310:661-2-5. . . . . [AMENDED] 2415
310:661-2-6. . . . . [AMENDED] 2415
310:675-7-9.1. . . . . [AMENDED] (E) 156
310:675-7-9.1. . . . . [AMENDED] 2416
310:675-9-1.1. . . . . [AMENDED] (E) 157
310:675-9-1.1. . . . . [AMENDED] 2417
310:675-9-5.1. . . . . [AMENDED] (E) 158
310:675-9-5.1. . . . . [AMENDED] 2418
310:675-13-5. . . . . [AMENDED] (E) 159
310:675-13-5. . . . . [AMENDED] 2419
310:675-15-3.1. . . . . [NEW] 2420
310:675-19-1. . . . . [NEW] (E) 557
310:675-19-1. . . . . [NEW] 2420
310:675-19-2. . . . . [NEW] (E) 557
310:675-19-2. . . . . [NEW] 2420
310:675-19-3. . . . . [NEW] (E) 557
310:675-19-3. . . . . [NEW] 2420
310:675-19-4. . . . . [NEW] (E) 558
310:675-19-4. . . . . [NEW] 2421
310:675-19-5. . . . . [NEW] (E) 558
310:675-19-5. . . . . [NEW] 2421
310:675-19-6. . . . . [NEW] (E) 558
310:675-19-6. . . . . [NEW] 2421
310:675-19-7. . . . . [NEW] (E) 558
310:675-19-7. . . . . [NEW] 2421
310:675-19-8. . . . . [NEW] (E) 558
310:675-19-8. . . . . [NEW] 2421
310:677-13-1. . . . . [AMENDED] (E) 560
310:677-13-1. . . . . [AMENDED] 2423
310:677-13-2. . . . . [AMENDED] (E) 560
310:677-13-2. . . . . [AMENDED] 2423
310:677-13-3. . . . . [AMENDED] (E) 560
310:677-13-3. . . . . [AMENDED] 2424
310:677-13-4. . . . . [AMENDED] (E) 561
310:677-13-4. . . . . [AMENDED] 2424
310:677-13-5. . . . . [AMENDED] (E) 562
310:677-13-5. . . . . [AMENDED] 2426
310:677-13-6. . . . . [NEW] (E) 563
310:677-13-6. . . . . [NEW] 2426
310:677-13-7. . . . . [NEW] (E) 563
310:677-13-7. . . . . [NEW] 2426
310:677-13-8. . . . . [NEW] (E) 563
310:677-13-8. . . . . [NEW] 2427
310:677-13-9. . . . . [NEW] (E) 564
310:677-13-9. . . . . [NEW] 2427
310:677-13-10. . . . . [NEW] (E) 564
310:677-13-10. . . . . [NEW] 2427
310:677-13-11. . . . . [NEW] (E) 565
310:677-13-11. . . . . [NEW] 2428
317:1-3-5. . . . . [REVOKED] (E) 759
317:1-3-5. . . . . [REVOKED] 2429
317:1-7-6. . . . . [AMENDED] (E) 760
317:1-7-6. . . . . [AMENDED] 2430
317:1-7-6.1. . . . . [AMENDED] (E) 760
317:1-7-6.1. . . . . [AMENDED] 2430
317:1-9-7. . . . . [REVOKED] (E) 760
317:1-9-7. . . . . [REVOKED] 2430
317:1-9-8. . . . . [REVOKED] (E) 761
317:1-9-8. . . . . [REVOKED] 2430
317:2-1-1. . . . . [AMENDED] (E) 761
317:2-1-1. . . . . [AMENDED] 2431
317:2-1-2. . . . . [AMENDED] (E) 761
317:2-1-2. . . . . [AMENDED] 2431
317:2-1-2.1. . . . . [REVOKED] (E) 763
317:2-1-2.1. . . . . [REVOKED] 2433
317:2-1-2.2. . . . . [REVOKED] (E) 763
317:2-1-2.2. . . . . [REVOKED] 2433
317:2-1-2.3. . . . . [REVOKED] (E) 764
317:2-1-2.3. . . . . [REVOKED] 2434
317:2-1-4. . . . . [REVOKED] (E) 766
317:2-1-4. . . . . [REVOKED] 2436
317:2-1-5. . . . . [NEW] (E) 766
317:2-1-5. . . . . [NEW] 2436
317:2-1-6. . . . . [NEW] (E) 767
317:2-1-6. . . . . [NEW] 2437
317:2-1-7. . . . . [NEW] (E) 767
317:2-1-7. . . . . [NEW] 2437
317:2-1-8. . . . . [NEW] (E) 768
317:2-1-8. . . . . [NEW] 2438
317:2-1-9. . . . . [NEW] (E) 768
317:2-1-9. . . . . [NEW] 2438
317:2-1-10. . . . . [NEW] (E) 768
317:2-1-10. . . . . [NEW] 2438
317:2-1-11. . . . . [NEW] (E) 769
317:2-1-11. . . . . [NEW] 2439
317:2-1-12. . . . . [NEW] (E) 770
317:2-1-12. . . . . [NEW] 2439
317:2-1-13. . . . . [NEW] (E) 770
317:2-1-13. . . . . [NEW] 2440
317:30-3-4.1. . . . . [AMENDED] 2461
317:30-3-5. . . . . [AMENDED] (E) 239
317:30-3-5. . . . . [AMENDED] 1347
317:30-3-15. . . . . [AMENDED] 2463
317:30-3-19. . . . . [AMENDED] (E) 771
317:30-3-19. . . . . [AMENDED] 2441
317:30-3-20. . . . . [AMENDED] (E) 773
317:30-3-20. . . . . [AMENDED] 2443
317:30-3-21. . . . . [AMENDED] (E) 774
317:30-3-21. . . . . [AMENDED] 2444
317:30-3-25. . . . . [AMENDED] 2460
317:30-3-47. . . . . [REVOKED] 2464
317:30-3-48. . . . . [REVOKED] 2464
317:30-3-49. . . . . [REVOKED] 2464
317:30-3-50. . . . . [REVOKED] 2464
317:30-3-51. . . . . [REVOKED] 2466
317:30-3-52. . . . . [REVOKED] 2466
317:30-3-53. . . . . [REVOKED] 2466
317:30-3-54. . . . . [REVOKED] 2466
317:30-3-55. . . . . [REVOKED] 2467
317:30-3-56. . . . . [REVOKED] 2467
317:30-3-57. . . . . [AMENDED] 2478
317:30-3-59. . . . . [AMENDED] (E) 241
317:30-3-59. . . . . [AMENDED] 2487
317:30-3-65. . . . . [NEW] 2467
317:30-3-65.1. . . . . [NEW] 2467
317:30-3-65.2. . . . . [NEW] 2468
317:30-3-65.3. . . . . [NEW] 2469
317:30-3-65.4. . . . . [NEW] 2469
317:30-3-65.5. . . . . [NEW] 2470
317:30-3-65.6. . . . . [NEW] 2471
317:30-3-65.7. . . . . [NEW] 2471
317:30-3-65.8. . . . . [NEW] 2471
317:30-3-65.9. . . . . [NEW] 2471
317:30-3-65.10. . . . . [NEW] 2472

317:30-3-65.11. . . . . [NEW] 2472
317:30-3-74. . . . . [REVOKED] (E) 263
317:30-3-74. . . . . [REVOKED] 1353
317:30-3-78. . . . . [AMENDED] 2490
317:30-5-2. . . . . [AMENDED] (E) 241
317:30-5-2. . . . . [AMENDED] 2480
317:30-5-9. . . . . [AMENDED] (E) 246
317:30-5-14. . . . . [AMENDED] (E) 28
317:30-5-14. . . . . [AMENDED] 1353
317:30-5-14. . . . . [NEW] 2520
317:30-5-25. . . . . [AMENDED] (E) 774
317:30-5-25. . . . . [AMENDED] 2444
317:30-5-41. . . . . [AMENDED] (E) 248
317:30-5-41. . . . . [AMENDED] (E) 774
317:30-5-41. . . . . [AMENDED] 2444
317:30-5-42. . . . . [AMENDED] (E) 29
317:30-5-42. . . . . [AMENDED] 1355
317:30-5-47. . . . . [AMENDED] (E) 251
317:30-5-47. . . . . [AMENDED] (E) 807
317:30-5-47. . . . . [AMENDED] 2500
317:30-5-47.2. . . . . [NEW] (E) 259
317:30-5-47.2. . . . . [NEW] 1348
317:30-5-47.3. . . . . [NEW] (E) 260
317:30-5-47.3. . . . . [NEW] 1350
317:30-5-47.4. . . . . [NEW] (E) 260
317:30-5-47.4. . . . . [NEW] 1350
317:30-5-47.5. . . . . [NEW] (E) 261
317:30-5-47.5. . . . . [NEW] 1351
317:30-5-48. . . . . [REVOKED] (E) 262
317:30-5-48. . . . . [REVOKED] 1351
317:30-5-62. . . . . [AMENDED] (E) 778
317:30-5-62. . . . . [AMENDED] 2448
317:30-5-77.2. . . . . [AMENDED] 2486
317:30-5-95. . . . . [AMENDED] 2509
317:30-5-95.1. . . . . [AMENDED] 2510
317:30-5-95.2. . . . . [AMENDED] (E) 779
317:30-5-95.2. . . . . [REVOKED] 2512
317:30-5-95.3. . . . . [REVOKED] 2518
317:30-5-95.4. . . . . [NEW] 2518
317:30-5-95.5. . . . . [NEW] 2519
317:30-5-95.6. . . . . [NEW] 2519
317:30-5-95.7. . . . . [NEW] 2519
317:30-5-95.8. . . . . [NEW] 2519
317:30-5-95.9. . . . . [NEW] 2519
317:30-5-95.10. . . . . [NEW] 2519
317:30-5-95.11. . . . . [NEW] 2519
317:30-5-95.12. . . . . [NEW] 2519
317:30-5-95.13. . . . . [NEW] 2520
317:30-5-95.15. . . . . [NEW] 2520
317:30-5-95.16. . . . . [NEW] 2520
317:30-5-95.17. . . . . [NEW] 2520
317:30-5-95.18. . . . . [NEW] 2520
317:30-5-95.19. . . . . [NEW] 2521
317:30-5-95.20. . . . . [NEW] 2521
317:30-5-95.21. . . . . [NEW] 2521
317:30-5-95.22. . . . . [NEW] 2521
317:30-5-95.23. . . . . [NEW] 2521
317:30-5-95.24. . . . . [NEW] 2522
317:30-5-95.25. . . . . [NEW] 2522
317:30-5-95.26. . . . . [NEW] 2522
317:30-5-95.27. . . . . [NEW] 2523
317:30-5-95.28. . . . . [NEW] 2523
317:30-5-95.29. . . . . [NEW] 2523
317:30-5-95.30. . . . . [NEW] 2523
317:30-5-95.31. . . . . [NEW] 2524
317:30-5-95.32. . . . . [NEW] 2524
317:30-5-95.33. . . . . [NEW] 2524
317:30-5-95.34. . . . . [NEW] 2525
317:30-5-95.35. . . . . [NEW] 2527
317:30-5-95.36. . . . . [NEW] 2527
317:30-5-95.37. . . . . [NEW] 2527
317:30-5-95.38. . . . . [NEW] 2527
317:30-5-95.39. . . . . [NEW] 2527
317:30-5-95.40. . . . . [NEW] 2528
317:30-5-95.41. . . . . [NEW] 2528
317:30-5-95.42. . . . . [NEW] 2528
317:30-5-96. . . . . [REVOKED] 2529
317:30-5-96.1. . . . . [REVOKED] 2531
317:30-5-96.2. . . . . [NEW] 2531
317:30-5-96.3. . . . . [NEW] 2532
317:30-5-96.4. . . . . [NEW] 2532
317:30-5-96.5. . . . . [NEW] 2532
317:30-5-96.6. . . . . [NEW] 2532
317:30-5-96.7. . . . . [NEW] 2533
317:30-5-110. . . . . [NEW] (E) 262
317:30-5-110. . . . . [NEW] 1351
317:30-5-111. . . . . [NEW] (E) 262
317:30-5-111. . . . . [NEW] 1351
317:30-5-112. . . . . [NEW] (E) 262
317:30-5-112. . . . . [NEW] 1352
317:30-5-113. . . . . [NEW] (E) 262
317:30-5-113. . . . . [NEW] 1352
317:30-5-114. . . . . [NEW] (E) 263
317:30-5-114. . . . . [NEW] 1352
317:30-5-122. . . . . [AMENDED] (E) 264
317:30-5-122. . . . . [AMENDED] 1357
317:30-5-123. . . . . [AMENDED] (E) 785
317:30-5-123. . . . . [AMENDED] 2537
317:30-5-124. . . . . [AMENDED] (E) 788
317:30-5-124. . . . . [AMENDED] 2449
317:30-5-131.1. . . . . [AMENDED] (E) 790
317:30-5-131.1. . . . . [AMENDED] 2450
317:30-5-131.2. . . . . [AMENDED] (E) 793
317:30-5-131.2. . . . . [AMENDED] 2454
317:30-5-133. . . . . [AMENDED] (E) 31
317:30-5-133. . . . . [AMENDED] 1358
317:30-5-195. . . . . [AMENDED] 2472
317:30-5-196. . . . . [AMENDED] 2473
317:30-5-197. . . . . [AMENDED] 2473
317:30-5-198. . . . . [AMENDED] 2473
317:30-5-199. . . . . [AMENDED] 2475
317:30-5-200. . . . . [REVOKED] 2475
317:30-5-201. . . . . [AMENDED] 2475
317:30-5-225. . . . . [AMENDED] (E) 265
317:30-5-225. . . . . [AMENDED] 1360
317:30-5-240. . . . . [AMENDED] 2541
317:30-5-241. . . . . [AMENDED] (E) 796
317:30-5-241. . . . . [AMENDED] 2544
317:30-5-248. . . . . [AMENDED] 2553
317:30-5-275. . . . . [AMENDED] 2554
317:30-5-276. . . . . [AMENDED] 2554
317:30-5-278.1. . . . . [AMENDED] 2555
317:30-5-327. . . . . [AMENDED] (E) 803
317:30-5-327. . . . . [AMENDED] 2456
317:30-5-335. . . . . [AMENDED] (E) 266
317:30-5-335. . . . . [AMENDED] 1361
317:30-5-336. . . . . [AMENDED] (E) 266
317:30-5-336. . . . . [AMENDED] 1361
317:30-5-342. . . . . [REVOKED] (E) 268
317:30-5-342. . . . . [REVOKED] 1363
317:30-5-343. . . . . [AMENDED] (E) 268
317:30-5-343. . . . . [AMENDED] 1363
317:30-5-356. . . . . [AMENDED] 2476
317:30-5-375. . . . . [AMENDED] (E) 265

317:30-5-375. . . . . [AMENDED] 1360
317:30-5-376. . . . . [AMENDED] 2476
317:30-5-412. . . . . [AMENDED] (E) 816
317:30-5-412. . . . . [AMENDED] 2556
317:30-5-431. . . . . [AMENDED] 2477
317:30-5-530. . . . . [NEW] (E) 30
317:30-5-530. . . . . [NEW] 1356
317:30-5-531. . . . . [NEW] (E) 30
317:30-5-531. . . . . [NEW] 1356
317:30-5-532. . . . . [NEW] (E) 30
317:30-5-532. . . . . [NEW] 1356
317:30-5-555. . . . . [NEW] (E) 33
317:30-5-555. . . . . [NEW] 1364
317:30-5-556. . . . . [NEW] (E) 33
317:30-5-556. . . . . [NEW] 1364
317:30-5-557. . . . . [NEW] (E) 33
317:30-5-557. . . . . [NEW] 1364
317:30-5-558. . . . . [NEW] (E) 33
317:30-5-558. . . . . [NEW] 1364
317:30-5-559. . . . . [NEW] (E) 34
317:30-5-559. . . . . [NEW] 1365
317:30-5-560. . . . . [NEW] (E) 34
317:30-5-560. . . . . [NEW] 1365
317:30-5-560.1. . . . . [NEW] (E) 34
317:30-5-560.1. . . . . [NEW] 1365
317:30-5-560.2. . . . . [NEW] (E) 35
317:30-5-560.2. . . . . [NEW] 1365
317:30-5-566. . . . . [AMENDED] 2488
317:30-5-586.1. . . . . [AMENDED] (E) 805
317:30-5-586.1. . . . . [AMENDED] 2459
317:30-5-595. . . . . [AMENDED] 2557
317:30-5-596. . . . . [AMENDED] 2559
317:30-5-596.1. . . . . [AMENDED] (E) 806
317:30-5-596.1. . . . . [AMENDED] 2560
317:30-5-596.2. . . . . [AMENDED] 2561
317:30-5-597. . . . . [REVOKED] 2561
317:30-5-598. . . . . [REVOKED] 2561
317:30-5-599. . . . . [AMENDED] 2561
317:30-5-640. . . . . [AMENDED] 2562
317:30-5-640.1. . . . . [AMENDED] 2563
317:30-5-641. . . . . [AMENDED] 2563
317:30-5-641.1. . . . . [AMENDED] 2565
317:30-5-641.2. . . . . [REVOKED] 2565
317:30-5-641.3. . . . . [AMENDED] 2565
317:30-5-642. . . . . [REVOKED] 2566
317:30-5-644. . . . . [AMENDED] 2566
317:30-5-695. . . . . [AMENDED] 2490
317:30-5-695.1. . . . . [AMENDED] 2490
317:30-5-695.2. . . . . [AMENDED] 2490
317:30-5-696. . . . . [AMENDED] 2490
317:30-5-698. . . . . [AMENDED] 2494
317:30-5-699. . . . . [AMENDED] 2496
317:30-5-700. . . . . [AMENDED] 2497
317:30-5-700.1. . . . . [AMENDED] 2497
317:30-5-701. . . . . [AMENDED] 2499
317:30-5-703. . . . . [AMENDED] 2499
317:30-5-704. . . . . [AMENDED] 2499
317:30-5-705. . . . . [AMENDED] 2499
317:30-5-740. . . . . [AMENDED] 2567
317:30-5-741. . . . . [AMENDED] 2568
317:30-5-742. . . . . [AMENDED] 2568
317:30-5-742.2. . . . . [AMENDED] 2569
317:30-5-743.1. . . . . [NEW] 2570
317:30-5-745. . . . . [AMENDED] 2571
317:30-5-746. . . . . [AMENDED] (E) 806
317:30-5-746. . . . . [AMENDED] 2460
317:30-5-761. . . . . [AMENDED] 1366
317:30-5-762. . . . . [AMENDED] 1368
317:30-5-763. . . . . [AMENDED] (E) 160
317:30-5-763. . . . . [AMENDED] 1369
317:30-5-764. . . . . [AMENDED] 1377
317:30-5-901. . . . . [AMENDED] 2571
317:30-5-904. . . . . [REVOKED] 2571
317:30-5-1043. . . . . [AMENDED] 2572
317:30-5-1085. . . . . [NEW] 2576
317:30-5-1086. . . . . [NEW] 2576
317:30-5-1087. . . . . [NEW] 2576
317:30-5-1088. . . . . [NEW] 2576
317:30-5-1089. . . . . [NEW] 2577
317:30-5-1090. . . . . [NEW] 2577
317:30-5-1091. . . . . [NEW] 2577
317:30-5-1092. . . . . [NEW] 2577
317:30-5-1093. . . . . [NEW] 2577
317:30-5-1094. . . . . [NEW] 2578
317:30-5-1095. . . . . [NEW] 2578
317:30-5-1096. . . . . [NEW] 2579
317:30-5-1097. . . . . [NEW] 2579
317:30-5-1098. . . . . [NEW] 2579
317:30-5-1099. . . . . [NEW] 2580
317:35-1-2. . . . . [AMENDED] (E) 269
317:35-1-2. . . . . [AMENDED] 1379
317:35-3-2. . . . . [AMENDED] (E) 817
317:35-3-2. . . . . [AMENDED] 2581
317:35-5-2. . . . . [AMENDED] (E) 276
317:35-5-2. . . . . [AMENDED] 1387
317:35-5-7. . . . . [AMENDED] (E) 271
317:35-5-7. . . . . [AMENDED] 1381
317:35-5-26. . . . . [AMENDED] (E) 278
317:35-5-26. . . . . [AMENDED] 1390
317:35-6-60. . . . . [AMENDED] (E) 621
317:35-6-60. . . . . [AMENDED] 1385
317:35-6-61. . . . . [AMENDED] (E) 275
317:35-6-61. . . . . [AMENDED] (E) 622
317:35-6-61. . . . . [AMENDED] 1385
317:35-7-16. . . . . [AMENDED] (E) 276
317:35-7-16. . . . . [AMENDED] 1388
317:35-7-17. . . . . [REVOKED] (E) 277
317:35-7-17. . . . . [REVOKED] 1389
317:35-9-75. . . . . [AMENDED] (E) 623
317:35-9-75. . . . . [AMENDED] 1386
317:35-15-8.1. . . . . [AMENDED] (E) 819
317:35-15-8.1. . . . . [AMENDED] 2582
317:35-17-3. . . . . [AMENDED] (E) 169
317:35-17-3. . . . . [AMENDED] 1391
317:35-17-14. . . . . [AMENDED] 1393
317:35-18-1. . . . . [NEW] 2583
317:35-18-2. . . . . [NEW] 2583
317:35-18-3. . . . . [NEW] 2583
317:35-18-4. . . . . [NEW] 2584
317:35-18-5. . . . . [NEW] 2584
317:35-18-6. . . . . [NEW] 2584
317:35-18-7. . . . . [NEW] 2585
317:35-18-8. . . . . [NEW] 2585
317:35-18-9. . . . . [NEW] 2585
317:35-18-10. . . . . [NEW] 2586
317:35-18-11. . . . . [NEW] 2586
317:35-19-8. . . . . [AMENDED] 2587
317:35-19-9. . . . . [AMENDED] 2587
317:35-19-14. . . . . [AMENDED] 2589
317:35-19-16. . . . . [AMENDED] (E) 819
317:35-19-16. . . . . [AMENDED] 2590
317:35-19-22. . . . . [AMENDED] (E) 623
317:35-19-22. . . . . [AMENDED] 1386
317:40-1-2. . . . . [NEW] 1396

317:40-5-102. . . . . [AMENDED] 1398
317:40-5-104. . . . . [NEW] 1400
317:40-5-110. . . . . [AMENDED] 1401
317:40-5-150. . . . . [AMENDED] 1401
317:40-5-152. . . . . [AMENDED] 1404
317:40-7-2. . . . . [AMENDED] (E) 624
317:40-7-2. . . . . [AMENDED] 1406
317:40-7-12. . . . . [AMENDED] (E) 625
317:40-7-12. . . . . [AMENDED] 1406
317:45-1-1. . . . . [NEW] (E) 279
317:45-1-1. . . . . [NEW] 1408
317:45-1-2. . . . . [NEW] (E) 279
317:45-1-2. . . . . [NEW] (E) 820
317:45-1-2. . . . . [NEW] 2590
317:45-1-3. . . . . [NEW] (E) 280
317:45-1-3. . . . . [NEW] 1408
317:45-3-1. . . . . [NEW] (E) 280
317:45-3-1. . . . . [NEW] (E) 821
317:45-3-1. . . . . [NEW] 2591
317:45-3-2. . . . . [NEW] (E) 280
317:45-3-2. . . . . [NEW] 1408
317:45-5-1. . . . . [NEW] (E) 280
317:45-5-1. . . . . [NEW] 1408
317:45-5-2. . . . . [NEW] (E) 280
317:45-5-2. . . . . [NEW] 1409
317:45-7-1. . . . . [NEW] (E) 281
317:45-7-1. . . . . [NEW] (E) 821
317:45-7-1. . . . . [NEW] 2591
317:45-7-2. . . . . [NEW] (E) 281
317:45-7-2. . . . . [NEW] (E) 821
317:45-7-2. . . . . [NEW] 2591
317:45-7-3. . . . . [NEW] (E) 281
317:45-7-3. . . . . [NEW] 1409
317:45-7-4. . . . . [NEW] (E) 281
317:45-7-4. . . . . [NEW] 1409
317:45-7-5. . . . . [NEW] (E) 281
317:45-7-5. . . . . [NEW] (E) 821
317:45-7-5. . . . . [NEW] 2591
317:45-7-6. . . . . [NEW] (E) 281
317:45-7-6. . . . . [NEW] 1409
317:45-7-7. . . . . [NEW] (E) 281
317:45-7-7. . . . . [NEW] 1409
317:45-7-8. . . . . [NEW] (E) 281
317:45-7-8. . . . . [NEW] 1409
317:45-9-1. . . . . [NEW] (E) 282
317:45-9-1. . . . . [NEW] (E) 821
317:45-9-1. . . . . [NEW] 2592
317:45-9-2. . . . . [NEW] (E) 282
317:45-9-2. . . . . [NEW] 1409
317:45-9-3. . . . . [NEW] (E) 282
317:45-9-3. . . . . [NEW] 1409
317:45-9-4. . . . . [NEW] (E) 282
317:45-9-4. . . . . [NEW] 1409
317:45-9-5. . . . . [NEW] (E) 282
317:45-9-5. . . . . [NEW] 1410
317:45-9-6. . . . . [NEW] (E) 282
317:45-9-6. . . . . [NEW] 1410
317:45-9-7. . . . . [NEW] (E) 283
317:45-9-7. . . . . [NEW] 1410
317:45-9-8. . . . . [NEW] (E) 283
317:45-9-8. . . . . [NEW] 1410
325:20-1-6. . . . . [AMENDED] 973
325:25-1-5. . . . . [AMENDED] 2592
325:25-1-17. . . . . [AMENDED] 2593
325:30-1-13. . . . . [AMENDED] 974
325:30-1-17. . . . . [AMENDED] 974
325:35-1-5. . . . . [AMENDED] (E) 2069
325:35-1-34. . . . . [AMENDED] 975
325:40-1-5. . . . . [AMENDED] (E) 2071
325:40-1-5. . . . . [AMENDED] 2593
325:45-1-2. . . . . [AMENDED] 977
325:45-1-2. . . . . [AMENDED] (E) 2072
325:45-1-2. . . . . [AMENDED] 2595
325:45-1-4. . . . . [AMENDED] (E) 2073
325:45-1-4. . . . . [AMENDED] 2596
325:45-1-5. . . . . [AMENDED] (E) 2073
325:45-1-5. . . . . [AMENDED] 2596
325:45-1-6. . . . . [AMENDED] (E) 2073
325:45-1-6. . . . . [AMENDED] 2596
325:45-1-7. . . . . [AMENDED] (E) 2074
325:45-1-7. . . . . [AMENDED] 2596
325:45-1-8. . . . . [REVOKED] (E) 2074
325:45-1-8. . . . . [REVOKED] 2597
325:45-1-9. . . . . [AMENDED] (E) 2074
325:45-1-9. . . . . [AMENDED] 2597
325:45-1-10. . . . . [REVOKED] (E) 2074
325:45-1-10. . . . . [REVOKED] 2597
325:45-1-11. . . . . [AMENDED] (E) 2075
325:45-1-11. . . . . [AMENDED] 2597
325:45-1-12. . . . . [AMENDED] (E) 2075
325:45-1-12. . . . . [AMENDED] 2598
325:45-1-13. . . . . [AMENDED] (E) 2075
325:45-1-13. . . . . [AMENDED] 2598
325:45-1-15. . . . . [AMENDED] (E) 2076
325:45-1-15. . . . . [AMENDED] 2598
325:45-1-17. . . . . [AMENDED] (E) 2076
325:45-1-17. . . . . [AMENDED] 2599
325:45-1-18. . . . . [AMENDED] (E) 2076
325:45-1-18. . . . . [AMENDED] 2599
325:45-1-19. . . . . [AMENDED] (E) 2076
325:45-1-19. . . . . [AMENDED] 2599
325:45-1-20. . . . . [AMENDED] (E) 2076
325:45-1-20. . . . . [AMENDED] 2599
325:45-1-22. . . . . [AMENDED] (E) 2077
325:45-1-22. . . . . [AMENDED] 2600
325:45-1-23. . . . . [AMENDED] (E) 2077
325:45-1-23. . . . . [AMENDED] 2600
325:45-1-24. . . . . [AMENDED] (E) 2078
325:45-1-24. . . . . [AMENDED] 2600
325:45-1-25. . . . . [REVOKED] (E) 2078
325:45-1-25. . . . . [REVOKED] 2601
325:45-1-26. . . . . [NEW] (E) 2078
325:45-1-26. . . . . [NEW] 2601
325:45-1-27. . . . . [NEW] (E) 2078
325:45-1-27. . . . . [NEW] 2601
325:45-1-28. . . . . [NEW] (E) 2078
325:45-1-28. . . . . [NEW] 2601
325:45-1-29. . . . . [NEW] (E) 2079
325:45-1-29. . . . . [NEW] 2601
325:50-1-2. . . . . [AMENDED] 978
325:70-1-2. . . . . [AMENDED] 979
325:70-1-22. . . . . [AMENDED] 2602
325:80-1-1. . . . . [NEW] (E) 1150
325:80-1-1. . . . . [NEW] (E) 2080
325:80-1-1. . . . . [NEW] 2604
325:80-1-2. . . . . [NEW] (E) 1150
325:80-1-2. . . . . [NEW] (E) 2080
325:80-1-2. . . . . [NEW] 2604
325:80-1-3. . . . . [NEW] (E) 1152
325:80-1-3. . . . . [NEW] (E) 2082
325:80-1-3. . . . . [NEW] 2605
325:80-3-1. . . . . [NEW] (E) 1152
325:80-3-1. . . . . [NEW] (E) 2082
325:80-3-1. . . . . [NEW] 2605

325:80-5-1. . . . . [NEW] (E) 1153
325:80-5-1. . . . . [NEW] (E) 2082
325:80-5-1. . . . . [NEW] 2606
325:80-5-2. . . . . [NEW] (E) 1153
325:80-5-2. . . . . [NEW] (E) 2083
325:80-5-2. . . . . [NEW] 2606
325:80-5-3. . . . . [NEW] (E) 1153
325:80-5-3. . . . . [NEW] (E) 2083
325:80-5-3. . . . . [NEW] 2607
325:80-5-4. . . . . [NEW] (E) 1153
325:80-5-4. . . . . [NEW] (E) 2083
325:80-5-4. . . . . [NEW] 2607
325:80-5-5. . . . . [NEW] (E) 1153
325:80-5-5. . . . . [NEW] (E) 2083
325:80-5-5. . . . . [NEW] 2607
325:80-5-6. . . . . [NEW] (E) 1154
325:80-5-6. . . . . [NEW] (E) 2083
325:80-5-6. . . . . [NEW] 2607
325:80-7-1. . . . . [NEW] (E) 1154
325:80-7-1. . . . . [NEW] (E) 2084
325:80-7-1. . . . . [NEW] 2608
325:80-7-2. . . . . [NEW] (E) 1154
325:80-7-2. . . . . [NEW] (E) 2084
325:80-7-2. . . . . [NEW] 2608
325:80-7-3. . . . . [NEW] (E) 1155
325:80-7-3. . . . . [NEW] (E) 2085
325:80-7-3. . . . . [NEW] 2608
325:80-7-4. . . . . [NEW] (E) 1155
325:80-7-4. . . . . [NEW] (E) 2085
325:80-7-4. . . . . [NEW] 2609
325:80-7-5. . . . . [NEW] (E) 1156
325:80-7-5. . . . . [NEW] (E) 2085
325:80-7-5. . . . . [NEW] 2609
325:80-9-1. . . . . [NEW] (E) 1156
325:80-9-1. . . . . [NEW] (E) 2085
325:80-9-1. . . . . [NEW] 2609
325:80-9-2. . . . . [NEW] (E) 1156
325:80-9-2. . . . . [NEW] (E) 2086
325:80-9-2. . . . . [NEW] 2609
325:80-11-1. . . . . [NEW] (E) 1156
325:80-11-1. . . . . [NEW] (E) 2086
325:80-11-1. . . . . [NEW] 2609
325:80-11-2. . . . . [NEW] (E) 1156
325:80-11-2. . . . . [NEW] (E) 2086
325:80-11-2. . . . . [NEW] 2610
325:80-11-3. . . . . [NEW] (E) 1156
325:80-11-3. . . . . [NEW] (E) 2086
325:80-11-3. . . . . [NEW] 2610
325:80-11-4. . . . . [NEW] (E) 1156
325:80-11-4. . . . . [NEW] (E) 2086
325:80-11-4. . . . . [NEW] 2610
325:80-13-1. . . . . [NEW] (E) 1157
325:80-13-1. . . . . [NEW] (E) 2086
325:80-13-1. . . . . [NEW] 2610
325:80-13-2. . . . . [NEW] (E) 1157
325:80-13-2. . . . . [NEW] (E) 2086
325:80-13-2. . . . . [NEW] 2610
325:80-13-3. . . . . [NEW] (E) 1157
325:80-13-3. . . . . [NEW] (E) 2087
325:80-13-3. . . . . [NEW] 2610
325:80-13-4. . . . . [NEW] (E) 1157
325:80-13-4. . . . . [NEW] (E) 2087
325:80-13-4. . . . . [NEW] 2610
325:80-13-5. . . . . [NEW] (E) 1157
325:80-13-5. . . . . [NEW] (E) 2087
325:80-13-5. . . . . [NEW] 2610
325:80-13-6. . . . . [NEW] (E) 1157
325:80-13-6. . . . . [NEW] (E) 2087
325:80-13-6. . . . . [NEW] 2610
325:80-13-7. . . . . [NEW] (E) 1157
325:80-13-7. . . . . [NEW] (E) 2087
325:80-13-7. . . . . [NEW] 2611
325:80-13-8. . . . . [NEW] (E) 1157
325:80-13-8. . . . . [NEW] (E) 2087
325:80-13-8. . . . . [NEW] 2611
325:80-15-1. . . . . [NEW] (E) 1158
325:80-15-1. . . . . [NEW] (E) 2087
325:80-15-1. . . . . [NEW] 2611
325:80-17-1. . . . . [NEW] (E) 1159
325:80-17-1. . . . . [NEW] (E) 2088
325:80-17-1. . . . . [NEW] 2612
325:80-19-1. . . . . [NEW] (E) 1159
325:80-19-1. . . . . [NEW] (E) 2089
325:80-19-1. . . . . [NEW] 2612
325:80-19-2. . . . . [NEW] (E) 1159
325:80-19-2. . . . . [NEW] (E) 2089
325:80-19-2. . . . . [NEW] 2612
325:80-19-3. . . . . [NEW] (E) 1159
325:80-19-3. . . . . [NEW] (E) 2089
325:80-19-3. . . . . [NEW] 2613
325:80-19-4. . . . . [NEW] (E) 1160
325:80-19-4. . . . . [NEW] (E) 2089
325:80-19-4. . . . . [NEW] 2613
325:80-19-5. . . . . [NEW] (E) 1160
325:80-19-5. . . . . [NEW] (E) 2089
325:80-19-5. . . . . [NEW] 2613
325:85-1-1. . . . . [NEW] (E) 1160
325:85-1-1. . . . . [NEW] (E) 2092
325:85-1-1. . . . . [NEW] 2616
325:85-1-2. . . . . [NEW] (E) 1160
325:85-1-2. . . . . [NEW] (E) 2092
325:85-1-2. . . . . [NEW] 2616
325:85-3-1. . . . . [NEW] (E) 1162
325:85-3-1. . . . . [NEW] (E) 2094
325:85-3-1. . . . . [NEW] 2618
325:85-3-2. . . . . [NEW] (E) 2094
325:85-3-2. . . . . [NEW] 2618
325:85-5-1. . . . . [NEW] (E) 1162
325:85-5-1. . . . . [NEW] (E) 2094
325:85-5-1. . . . . [NEW] 2618
325:85-7-1. . . . . [NEW] (E) 1163
325:85-7-1. . . . . [NEW] (E) 2095
325:85-7-1. . . . . [NEW] 2619
325:85-9-1. . . . . [NEW] (E) 1163
325:85-9-1. . . . . [NEW] (E) 2095
325:85-9-1. . . . . [NEW] 2619
325:85-11-1. . . . . [NEW] (E) 1163
325:85-11-1. . . . . [NEW] (E) 2095
325:85-11-1. . . . . [NEW] 2619
325:85-11-1.1. . . . . [NEW] (E) 2096
325:85-11-1.1. . . . . [NEW] 2620
325:85-11-2. . . . . [NEW] (E) 1164
325:85-11-3. . . . . [NEW] (E) 1164
325:85-11-4. . . . . [NEW] (E) 1164
325:85-11-5. . . . . [NEW] (E) 1164
325:85-11-5. . . . . [NEW] (E) 2096
325:85-11-5. . . . . [NEW] 2620
325:85-11-6. . . . . [NEW] (E) 1165
325:85-11-7. . . . . [NEW] (E) 1166
325:85-11-8. . . . . [NEW] (E) 1167
325:85-11-8.1. . . . . [NEW] (E) 2096
325:85-11-8.1. . . . . [NEW] 2620
325:85-11-9. . . . . [NEW] (E) 1167
325:85-11-9. . . . . [NEW] (E) 2097

325:85-11-9. . . . . [NEW] 2621
325:85-11-10. . . . . [NEW] (E) 1167
325:85-11-11. . . . . [NEW] (E) 1167
325:85-11-12. . . . . [NEW] (E) 1167
325:85-11-12. . . . . [NEW] (E) 2097
325:85-11-12. . . . . [NEW] 2621
325:85-12-1. . . . . [NEW] (E) 2097
325:85-12-1. . . . . [NEW] 2621
325:85-12-2. . . . . [NEW] (E) 2097
325:85-12-2. . . . . [NEW] 2621
325:85-12-3. . . . . [NEW] (E) 2097
325:85-12-3. . . . . [NEW] 2621
325:85-12-4. . . . . [NEW] (E) 2098
325:85-12-4. . . . . [NEW] 2622
325:85-12-5. . . . . [NEW] (E) 2098
325:85-12-5. . . . . [NEW] 2622
325:85-12-6. . . . . [NEW] (E) 2099
325:85-12-6. . . . . [NEW] 2623
325:85-13-1. . . . . [NEW] (E) 1168
325:85-13-1. . . . . [NEW] (E) 2099
325:85-13-1. . . . . [NEW] 2623
325:85-13-2. . . . . [NEW] (E) 1168
325:85-13-3. . . . . [NEW] (E) 1168
325:85-13-4. . . . . [NEW] (E) 1168
325:85-13-4. . . . . [NEW] (E) 2099
325:85-13-4. . . . . [NEW] 2623
325:85-13-5. . . . . [NEW] (E) 1169
325:85-13-5. . . . . [NEW] (E) 2099
325:85-13-5. . . . . [NEW] 2623
325:85-13-6. . . . . [NEW] (E) 1169
325:85-13-6. . . . . [NEW] (E) 2099
325:85-13-6. . . . . [NEW] 2623
325:85-13-7. . . . . [NEW] (E) 1169
325:85-13-7. . . . . [NEW] (E) 2099
325:85-13-7. . . . . [NEW] 2623
325:85-13-8. . . . . [NEW] (E) 1169
325:85-13-8. . . . . [NEW] (E) 2100
325:85-13-8. . . . . [NEW] 2624
325:85-13-9. . . . . [NEW] (E) 1169
325:85-15-0. . . . . [NEW] (E) 2100
325:85-15-0. . . . . [NEW] 2624
325:85-15-1. . . . . [NEW] (E) 1169
325:85-15-1. . . . . [NEW] (E) 2100
325:85-15-1. . . . . [NEW] 2624
325:85-15-2. . . . . [NEW] (E) 1170
325:85-15-3. . . . . [NEW] (E) 1170
325:85-15-3. . . . . [NEW] (E) 2101
325:85-15-3. . . . . [NEW] 2625
325:85-15-4. . . . . [NEW] (E) 1170
325:85-15-4. . . . . [NEW] (E) 2101
325:85-15-4. . . . . [NEW] 2625
325:85-15-5. . . . . [NEW] (E) 1171
325:85-15-6. . . . . [NEW] (E) 1171
325:85-15-7. . . . . [NEW] (E) 1171
325:85-15-8. . . . . [NEW] (E) 1171
325:85-15-8. . . . . [NEW] (E) 2101
325:85-15-8. . . . . [NEW] 2625
325:85-15-9. . . . . [NEW] (E) 1171
325:85-15-9. . . . . [NEW] (E) 2101
325:85-15-9. . . . . [NEW] 2625
325:85-15-10. . . . . [NEW] (E) 1171
325:85-15-10. . . . . [NEW] (E) 2101
325:85-15-10. . . . . [NEW] 2625
325:85-15-11. . . . . [NEW] (E) 1171
325:85-15-11. . . . . [NEW] (E) 2101
325:85-15-11. . . . . [NEW] 2625
325:85-15-12. . . . . [NEW] (E) 1171
325:85-15-12. . . . . [NEW] (E) 2101
325:85-15-12. . . . . [NEW] 2625
325:85-15-13. . . . . [NEW] (E) 1171
325:85-15-13. . . . . [NEW] (E) 2101
325:85-15-13. . . . . [NEW] 2625
325:85-15-14. . . . . [NEW] (E) 1171
325:85-15-14. . . . . [NEW] (E) 2102
325:85-15-14. . . . . [NEW] 2626
325:85-15-15. . . . . [NEW] (E) 1172
325:85-15-15. . . . . [NEW] (E) 2102
325:85-15-15. . . . . [NEW] 2626
325:85-15-16. . . . . [NEW] (E) 1172
325:85-15-16. . . . . [NEW] (E) 2102
325:85-15-16. . . . . [NEW] 2626
325:85-15-17. . . . . [NEW] (E) 1172
325:85-15-17. . . . . [NEW] (E) 2102
325:85-15-17. . . . . [NEW] 2626
325:85-15-18. . . . . [NEW] (E) 1172
325:85-15-18. . . . . [NEW] (E) 2102
325:85-15-18. . . . . [NEW] 2626
325:85-15-19. . . . . [NEW] (E) 1172
325:85-15-19. . . . . [NEW] (E) 2102
325:85-15-19. . . . . [NEW] 2626
325:85-15-20. . . . . [NEW] (E) 1172
325:85-15-20. . . . . [NEW] (E) 2103
325:85-15-20. . . . . [NEW] 2627
325:85-15-21. . . . . [NEW] (E) 1172
325:85-15-21. . . . . [NEW] (E) 2103
325:85-15-21. . . . . [NEW] 2627
325:85-15-22. . . . . [NEW] (E) 1173
325:85-15-22. . . . . [NEW] (E) 2103
325:85-15-22. . . . . [NEW] 2627
325:85-15-23. . . . . [NEW] (E) 1173
325:85-15-23. . . . . [NEW] (E) 2103
325:85-15-23. . . . . [NEW] 2627
325:85-15-24. . . . . [NEW] (E) 1173
325:85-15-24. . . . . [NEW] (E) 2103
325:85-15-24. . . . . [NEW] 2627
325:85-15-25. . . . . [NEW] (E) 1173
325:85-15-25. . . . . [NEW] (E) 2103
325:85-15-25. . . . . [NEW] 2627
325:85-15-26. . . . . [NEW] (E) 1173
325:85-15-26. . . . . [NEW] (E) 2103
325:85-15-26. . . . . [NEW] 2627
325:85-15-27. . . . . [NEW] (E) 1174
325:85-15-27. . . . . [NEW] (E) 2104
325:85-15-27. . . . . [NEW] 2628
325:85-15-28. . . . . [NEW] (E) 1174
325:85-15-28. . . . . [NEW] (E) 2104
325:85-15-28. . . . . [NEW] 2628
325:85-15-29. . . . . [NEW] (E) 1174
325:85-15-29. . . . . [NEW] (E) 2104
325:85-15-29. . . . . [NEW] 2628
325:85-15-30. . . . . [NEW] (E) 1174
325:85-15-31. . . . . [NEW] (E) 1174
325:85-15-32. . . . . [NEW] (E) 1174
325:85-15-33. . . . . [NEW] (E) 1174
325:85-15-33. . . . . [NEW] (E) 2104
325:85-15-33. . . . . [NEW] 2628
325:85-15-34. . . . . [NEW] (E) 1175
325:85-15-34. . . . . [NEW] (E) 2104
325:85-15-34. . . . . [NEW] 2628
325:85-15-35. . . . . [NEW] (E) 1175
325:85-15-35. . . . . [NEW] (E) 2104
325:85-15-35. . . . . [NEW] 2628
325:85-15-36. . . . . [NEW] (E) 1175
325:85-15-36. . . . . [NEW] (E) 2104

325:85-15-36. . . . . [NEW] 2628
325:85-15-37. . . . . [NEW] (E) 1175
325:85-15-38. . . . . [NEW] (E) 1175
325:85-15-39. . . . . [NEW] (E) 1175
325:85-15-39. . . . . [NEW] (E) 2104
325:85-15-39. . . . . [NEW] 2628
325:85-15-40. . . . . [NEW] (E) 1175
325:85-15-40. . . . . [NEW] (E) 2104
325:85-15-40. . . . . [NEW] 2628
325:85-15-41. . . . . [NEW] (E) 1176
325:85-15-42. . . . . [NEW] (E) 1176
325:85-15-42. . . . . [NEW] (E) 2105
325:85-15-42. . . . . [NEW] 2629
325:85-15-43. . . . . [NEW] (E) 1176
325:85-15-43. . . . . [NEW] (E) 2105
325:85-15-43. . . . . [NEW] 2629
325:85-15-44. . . . . [NEW] (E) 1177
325:85-15-44. . . . . [NEW] (E) 2105
325:85-15-44. . . . . [NEW] 2629
325:85-15-45. . . . . [NEW] (E) 1177
325:85-15-45. . . . . [NEW] (E) 2105
325:85-15-45. . . . . [NEW] 2629
325:85-15-46. . . . . [NEW] (E) 1177
325:85-15-46. . . . . [NEW] (E) 2105
325:85-15-46. . . . . [NEW] 2629
325:85-15-47. . . . . [NEW] (E) 1177
325:85-15-47. . . . . [NEW] (E) 2106
325:85-15-47. . . . . [NEW] 2630
325:85-15-48. . . . . [NEW] (E) 1177
325:85-15-48. . . . . [NEW] (E) 2106
325:85-15-48. . . . . [NEW] 2630
325:85-15-49. . . . . [NEW] (E) 1178
325:85-15-49. . . . . [NEW] (E) 2106
325:85-15-49. . . . . [NEW] 2630
325:85-15-50. . . . . [NEW] (E) 2106
325:85-15-50. . . . . [NEW] 2630
325:85-15-51. . . . . [NEW] (E) 2107
325:85-15-51. . . . . [NEW] 2631
325:85-15-52. . . . . [NEW] (E) 2107
325:85-15-52. . . . . [NEW] 2631
325:85-15-53. . . . . [NEW] (E) 2107
325:85-15-53. . . . . [NEW] 2631
325:85-15-54. . . . . [NEW] (E) 2107
325:85-15-54. . . . . [NEW] 2631
325:85-15-55. . . . . [NEW] (E) 2108
325:85-15-55. . . . . [NEW] 2632
325:85-15-56. . . . . [NEW] (E) 2108
325:85-15-56. . . . . [NEW] 2632
325:85-15-57. . . . . [NEW] (E) 2108
325:85-15-57. . . . . [NEW] 2632
325:85-15-58. . . . . [NEW] (E) 2108
325:85-15-58. . . . . [NEW] 2632
325:85-15-59. . . . . [NEW] (E) 2108
325:85-15-59. . . . . [NEW] 2632
325:85-15-60. . . . . [NEW] (E) 2108
325:85-15-60. . . . . [NEW] 2632
325:85-15-61. . . . . [NEW] (E) 2108
325:85-15-61. . . . . [NEW] 2632
325:85-15-62. . . . . [NEW] (E) 2109
325:85-15-62. . . . . [NEW] 2633
325:85-15-63. . . . . [NEW] (E) 2109
325:85-15-63. . . . . [NEW] 2633
325:85-15-64. . . . . [NEW] (E) 2109
325:85-15-64. . . . . [NEW] 2633
325:85-17-1. . . . . [NEW] (E) 1178
325:85-17-2. . . . . [NEW] (E) 1178
325:85-17-3. . . . . [NEW] (E) 1178
325:85-17-4. . . . . [NEW] (E) 1179
325:85-17-5. . . . . [NEW] (E) 1179
325:85-17-6. . . . . [NEW] (E) 1179
325:85-17-7. . . . . [NEW] (E) 1180
325:85-17-8. . . . . [NEW] (E) 1180
325:85-17-9. . . . . [NEW] (E) 1180
325:85-17-10. . . . . [NEW] (E) 1180
325:85-17-11. . . . . [NEW] (E) 1180
325:85-17-12. . . . . [NEW] (E) 1180
325:85-19-1. . . . . [NEW] (E) 1181
325:85-19-2. . . . . [NEW] (E) 1181
325:85-19-3. . . . . [NEW] (E) 1181
325:85-19-4. . . . . [NEW] (E) 1182
325:85-20-1. . . . . [NEW] (E) 2109
325:85-20-1. . . . . [NEW] 2633
325:85-20-2. . . . . [NEW] (E) 2109
325:85-20-2. . . . . [NEW] 2633
325:85-20-3. . . . . [NEW] (E) 2109
325:85-20-3. . . . . [NEW] 2633
325:85-20-4. . . . . [NEW] (E) 2109
325:85-20-4. . . . . [NEW] 2633
325:85-20-5. . . . . [NEW] (E) 2109
325:85-20-5. . . . . [NEW] 2633
325:85-20-6. . . . . [NEW] (E) 2110
325:85-20-6. . . . . [NEW] 2634
325:85-20-7. . . . . [NEW] (E) 2110
325:85-20-7. . . . . [NEW] 2634
325:85-20-8. . . . . [NEW] (E) 2110
325:85-20-8. . . . . [NEW] 2634
325:85-20-9. . . . . [NEW] (E) 2110
325:85-20-9. . . . . [NEW] 2634
325:85-20-10. . . . . [NEW] (E) 2110
325:85-20-10. . . . . [NEW] 2634
325:85-20-11. . . . . [NEW] (E) 2110
325:85-20-11. . . . . [NEW] 2634
325:85-20-12. . . . . [NEW] (E) 2110
325:85-20-12. . . . . [NEW] 2634
325:85-20-13. . . . . [NEW] (E) 2110
325:85-20-13. . . . . [NEW] 2634
325:85-21-1. . . . . [NEW] (E) 1182
325:85-21-2. . . . . [NEW] (E) 1182
325:85-21-2. . . . . [NEW] (E) 2111
325:85-21-2. . . . . [NEW] 2635
325:85-21-3. . . . . [NEW] (E) 1183
325:85-21-4. . . . . [NEW] (E) 1183
325:85-21-5. . . . . [NEW] (E) 1183
325:85-21-6. . . . . [NEW] (E) 1184
325:85-21-6. . . . . [NEW] (E) 2111
325:85-21-6. . . . . [NEW] 2635
325:85-21-7. . . . . [NEW] (E) 1184
325:85-21-8. . . . . [NEW] (E) 1185
325:85-21-8. . . . . [NEW] (E) 2111
325:85-21-8. . . . . [NEW] 2635
325:85-21-9. . . . . [NEW] (E) 1185
325:85-21-9. . . . . [NEW] (E) 2111
325:85-21-9. . . . . [NEW] 2635
325:85-21-10. . . . . [NEW] (E) 1185
325:85-21-10. . . . . [NEW] (E) 2111
325:85-21-10. . . . . [NEW] 2635
325:85-21-11. . . . . [NEW] (E) 1185
325:85-21-11. . . . . [NEW] (E) 2111
325:85-21-11. . . . . [NEW] 2635
325:85-21-12. . . . . [NEW] (E) 1186
325:85-21-12. . . . . [NEW] (E) 2111
325:85-21-12. . . . . [NEW] 2635
325:85-21-13. . . . . [NEW] (E) 1186
325:85-21-13. . . . . [NEW] (E) 2111

325:85-21-13. . . . . [NEW] 2635
325:85-21-14. . . . . [NEW] (E) 1186
325:85-21-15. . . . . [NEW] (E) 1186
325:85-21-16. . . . . [NEW] (E) 1186
325:85-21-17. . . . . [NEW] (E) 1186
325:85-21-17. . . . . [NEW] (E) 2111
325:85-21-17. . . . . [NEW] 2635
325:85-21-18. . . . . [NEW] (E) 1186
325:85-21-18. . . . . [NEW] (E) 2112
325:85-21-18. . . . . [NEW] 2636
325:85-21-19. . . . . [NEW] (E) 1187
325:85-21-19. . . . . [NEW] (E) 2112
325:85-21-19. . . . . [NEW] 2636
325:85-21-20. . . . . [NEW] (E) 1187
325:85-21-21. . . . . [NEW] (E) 1187
325:85-21-21. . . . . [NEW] (E) 2112
325:85-21-21. . . . . [NEW] 2636
325:85-21-22. . . . . [NEW] (E) 1187
325:85-21-22. . . . . [NEW] (E) 2112
325:85-21-22. . . . . [NEW] 2636
325:85-21-23. . . . . [NEW] (E) 1187
325:85-21-23. . . . . [NEW] (E) 2112
325:85-21-23. . . . . [NEW] 2636
325:85-21-24. . . . . [NEW] (E) 1187
325:85-21-24. . . . . [NEW] (E) 2112
325:85-21-24. . . . . [NEW] 2636
325:85-21-25. . . . . [NEW] (E) 1187
325:85-21-25. . . . . [NEW] (E) 2112
325:85-21-25. . . . . [NEW] 2636
325:85-21-26. . . . . [NEW] (E) 2112
325:85-21-26. . . . . [NEW] 2636
325:85-21-27. . . . . [NEW] (E) 2112
325:85-21-27. . . . . [NEW] 2636
325:85-21-28. . . . . [NEW] (E) 2113
325:85-21-28. . . . . [NEW] 2637
325:85-21-29. . . . . [NEW] (E) 2113
325:85-21-29. . . . . [NEW] 2637
325:85-21-30. . . . . [NEW] (E) 2113
325:85-21-30. . . . . [NEW] 2637
325:85-21-31. . . . . [NEW] (E) 2113
325:85-21-31. . . . . [NEW] 2637
325:85-21-32. . . . . [NEW] (E) 2113
325:85-21-32. . . . . [NEW] 2637
325:85-23-1. . . . . [NEW] (E) 1187
325:85-23-2. . . . . [NEW] (E) 1188
325:85-23-3. . . . . [NEW] (E) 1188
325:85-23-4. . . . . [NEW] (E) 1188
325:85-23-5. . . . . [NEW] (E) 1188
325:85-23-6. . . . . [NEW] (E) 1188
325:85-23-7. . . . . [NEW] (E) 1188
325:85-25-1. . . . . [NEW] (E) 1188
325:85-25-1. . . . . [NEW] (E) 2113
325:85-25-1. . . . . [NEW] 2637
325:85-25-2. . . . . [NEW] (E) 1189
325:85-25-2. . . . . [NEW] (E) 2113
325:85-25-2. . . . . [NEW] 2637
325:85-25-3. . . . . [NEW] (E) 1189
325:85-25-3. . . . . [NEW] (E) 2114
325:85-25-3. . . . . [NEW] 2638
325:85-25-4. . . . . [NEW] (E) 1189
325:85-25-4. . . . . [NEW] (E) 2114
325:85-25-4. . . . . [NEW] 2638
325:85-25-5. . . . . [NEW] (E) 1190
325:85-25-5. . . . . [NEW] (E) 2114
325:85-25-5. . . . . [NEW] 2638
325:85-25-6. . . . . [NEW] (E) 1190
325:85-25-6. . . . . [NEW] (E) 2115
325:85-25-6. . . . . [NEW] 2639
325:85-25-7. . . . . [NEW] (E) 1190
325:85-25-7. . . . . [NEW] (E) 2115
325:85-25-7. . . . . [NEW] 2639
325:85-27-1. . . . . [NEW] (E) 1191
325:85-27-1. . . . . [NEW] (E) 2115
325:85-27-1. . . . . [NEW] 2639
325:90-1-1. . . . . [NEW] (E) 1192
325:90-1-1. . . . . [NEW] (E) 2117
325:90-1-1. . . . . [NEW] 2640
325:90-1-2. . . . . [NEW] (E) 1192
325:90-1-2. . . . . [NEW] (E) 2117
325:90-1-2. . . . . [NEW] 2641
325:90-3-1. . . . . [NEW] (E) 1192
325:90-3-1. . . . . [NEW] (E) 2117
325:90-3-1. . . . . [NEW] 2641
325:90-3-2. . . . . [NEW] (E) 1193
325:90-3-2. . . . . [NEW] (E) 2118
325:90-3-2. . . . . [NEW] 2642
325:90-3-3. . . . . [NEW] (E) 1193
325:90-3-3. . . . . [NEW] (E) 2118
325:90-3-3. . . . . [NEW] 2642
325:90-3-4. . . . . [NEW] (E) 1193
325:90-3-4. . . . . [NEW] (E) 2118
325:90-3-4. . . . . [NEW] 2642
325:90-3-5. . . . . [NEW] (E) 1193
325:90-3-5. . . . . [NEW] (E) 2118
325:90-3-5. . . . . [NEW] 2642
325:90-3-6. . . . . [NEW] (E) 2118
325:90-3-6. . . . . [NEW] 2642
325:90-5-1. . . . . [NEW] (E) 1194
325:90-5-1. . . . . [NEW] (E) 2118
325:90-5-1. . . . . [NEW] 2642
325:90-5-2. . . . . [NEW] (E) 1194
325:90-5-2. . . . . [NEW] (E) 2119
325:90-5-2. . . . . [NEW] 2643
325:90-5-3. . . . . [NEW] (E) 1194
325:90-5-3. . . . . [NEW] (E) 2119
325:90-5-3. . . . . [NEW] 2643
325:90-5-4. . . . . [NEW] (E) 1195
325:90-5-4. . . . . [NEW] (E) 2120
325:90-5-4. . . . . [NEW] 2644
325:90-5-5. . . . . [NEW] (E) 1195
325:90-5-5. . . . . [NEW] (E) 2120
325:90-5-5. . . . . [NEW] 2644
325:90-7-1. . . . . [NEW] (E) 1195
325:90-7-1. . . . . [NEW] (E) 2120
325:90-7-1. . . . . [NEW] 2644
340:2-1-40. . . . . [AMENDED] 2645
340:2-1-41. . . . . [AMENDED] 2645
340:2-1-42. . . . . [AMENDED] 2645
340:2-1-43. . . . . [AMENDED] 2646
340:2-1-44. . . . . [AMENDED] 2647
340:2-3-2. . . . . [AMENDED] 1776
340:2-3-32. . . . . [AMENDED] 1780
340:2-3-33. . . . . [AMENDED] 1782
340:2-3-35. . . . . [AMENDED] 1784
340:2-3-36. . . . . [AMENDED] 1785
340:2-3-37. . . . . [AMENDED] 1789
340:2-3-38. . . . . [AMENDED] 1790
340:2-3-45. . . . . [AMENDED] 1793
340:2-3-46. . . . . [AMENDED] 1800
340:2-3-50. . . . . [AMENDED] 1800
340:2-3-51. . . . . [AMENDED] 1801
340:2-3-52. . . . . [AMENDED] 1802
340:2-3-53. . . . . [AMENDED] 1803
340:2-3-64. . . . . [AMENDED] 1804

340:2-3-71. . . . . [AMENDED] 1805
340:2-11-79. . . . . [AMENDED] 1808
340:2-11-79.1. . . . . [NEW] 1809
340:2-11-80. . . . . [REVOKED] 1809
340:2-11-81. . . . . [REVOKED] 1809
340:2-11-82. . . . . [REVOKED] 1809
340:2-11-83. . . . . [REVOKED] 1810
340:2-11-84. . . . . [REVOKED] 1811
340:2-11-85. . . . . [AMENDED] 1811
340:2-11-86. . . . . [AMENDED] 1814
340:2-11-87. . . . . [AMENDED] 1816
340:2-11-88. . . . . [REVOKED] 1817
340:2-11-89. . . . . [REVOKED] 1818
340:2-11-90. . . . . [REVOKED] 1819
340:2-11-91. . . . . [AMENDED] 1820
340:2-11-92. . . . . [AMENDED] 1823
340:2-11-93. . . . . [REVOKED] 1826
340:2-11-94. . . . . [REVOKED] 1826
340:2-11-95. . . . . [REVOKED] 1826
340:2-11-96. . . . . [REVOKED] 1827
340:2-11-97. . . . . [AMENDED] 1827
340:2-11-98. . . . . [AMENDED] 1828
340:2-11-99. . . . . [REVOKED] 1828
340:2-11-100. . . . . [AMENDED] 1828
340:2-11-115. . . . . [AMENDED] 1828
340:2-11-116. . . . . [AMENDED] 1828
340:2-11-117. . . . . [AMENDED] 1829
340:2-11-118. . . . . [REVOKED] 1830
340:2-11-119. . . . . [AMENDED] 1830
340:2-11-119.1. . . . . [NEW] 1832
340:2-11-120. . . . . [REVOKED] 1833
340:2-11-121. . . . . [AMENDED] 1833
340:2-11-122. . . . . [REVOKED] 1834
340:2-11-123. . . . . [REVOKED] 1834
340:2-11-124. . . . . [REVOKED] 1834
340:2-15-1. . . . . [AMENDED] 2648
340:2-15-2. . . . . [AMENDED] 2648
340:2-15-3. . . . . [REVOKED] 2650
340:2-15-4. . . . . [AMENDED] 2650
340:2-15-5. . . . . [AMENDED] 2652
340:2-15-6. . . . . [REVOKED] 2652
340:2-15-7. . . . . [NEW] 2653
340:2-15-25. . . . . [AMENDED] 2653
340:2-15-26. . . . . [REVOKED] 2653
340:2-15-27. . . . . [AMENDED] 2653
340:2-15-27.1. . . . . [NEW] 2654
340:2-15-28. . . . . [AMENDED] 2654
340:2-15-29. . . . . [REVOKED] 2655
340:2-15-30. . . . . [REVOKED] 2656
340:2-15-31. . . . . [REVOKED] 2656
340:2-15-32. . . . . [REVOKED] 2656
340:2-15-33. . . . . [REVOKED] 2657
340:2-21-12. . . . . [AMENDED] 1835
340:2-21-13. . . . . [AMENDED] 1835
340:2-21-14. . . . . [REVOKED] 1836
340:2-21-15. . . . . [AMENDED] 1836
340:2-21-16. . . . . [AMENDED] 1836
340:2-21-20. . . . . [AMENDED] 1837
340:2-21-21. . . . . [REVOKED] 1837
340:2-21-22. . . . . [REVOKED] 1837
340:2-21-23. . . . . [REVOKED] 1838
340:2-21-24. . . . . [REVOKED] 1839
340:2-21-25. . . . . [REVOKED] 1839
340:2-21-26. . . . . [REVOKED] 1839
340:2-21-27. . . . . [REVOKED] 1839
340:2-21-28. . . . . [REVOKED] 1839
340:2-21-29. . . . . [REVOKED] 1840
340:2-21-30. . . . . [REVOKED] 1840
340:2-21-31. . . . . [REVOKED] 1840
340:2-21-32. . . . . [REVOKED] 1840
340:2-21-33. . . . . [REVOKED] 1840
340:2-21-34. . . . . [REVOKED] 1840
340:2-21-35. . . . . [REVOKED] 1841
340:2-35-4. . . . . [AMENDED] 2661
340:2, App. L. . . . . [REVOKED] 2659
340:2, App. M. . . . . [REVOKED] 2660
340:5-5-3. . . . . [AMENDED] 2662
340:10-2-2. . . . . [AMENDED] 981
340:10-2-7. . . . . [AMENDED] 982
340:10-2-8. . . . . [AMENDED] (E) 626
340:10-2-8. . . . . [AMENDED] 984
340:10-3-5. . . . . [AMENDED] 985
340:10-3-32. . . . . [AMENDED] 988
340:10-3-40. . . . . [AMENDED] 989
340:10-3-56. . . . . [AMENDED] 990
340:10-3-57. . . . . [AMENDED] 992
340:10-10-3. . . . . [AMENDED] 994
340:15-1-4. . . . . [AMENDED] 1841
340:20, App. B. . . . . [REVOKED] 997
340:20, App. C. . . . . [REVOKED] 999
340:20, App. F. . . . . [REVOKED] 1002
340:25-1-1. . . . . [AMENDED] 1843
340:25-1-1.1. . . . . [AMENDED] 1843
340:25-1-1.2. . . . . [AMENDED] 1845
340:25-1-2. . . . . [AMENDED] 1846
340:25-1-2.1. . . . . [AMENDED] 1846
340:25-1-5.1. . . . . [AMENDED] 1846
340:25-3-1. . . . . [AMENDED] 1847
340:25-3-1.1. . . . . [AMENDED] 1847
340:25-3-3. . . . . [AMENDED] 1848
340:25-5-55. . . . . [AMENDED] 1848
340:25-5-66. . . . . [AMENDED] 1848
340:25-5-67. . . . . [AMENDED] 1848
340:25-5-67.1. . . . . [AMENDED] 1849
340:25-5-75. . . . . [AMENDED] 1850
340:25-5-95. . . . . [AMENDED] 1850
340:25-5-110. . . . . [AMENDED] 1850
340:25-5-110.1. . . . . [AMENDED] 1850
340:25-5-114. . . . . [AMENDED] 1851
340:25-5-117. . . . . [AMENDED] 1851
340:25-5-123. . . . . [AMENDED] 1852
340:25-5-124. . . . . [AMENDED] 1852
340:25-5-124.2. . . . . [AMENDED] 1853
340:25-5-133. . . . . [AMENDED] 1854
340:25-5-140. . . . . [AMENDED] 1854
340:25-5-140.1. . . . . [AMENDED] 1855
340:25-5-155. . . . . [AMENDED] 1855
340:25-5-168. . . . . [AMENDED] 1856
340:25-5-170. . . . . [AMENDED] 1856
340:25-5-171. . . . . [AMENDED] 1856
340:25-5-176. . . . . [AMENDED] 1856
340:25-5-178. . . . . [AMENDED] 1857
340:25-5-179. . . . . [AMENDED] 1858
340:25-5-179.1. . . . . [AMENDED] 1858
340:25-5-198. . . . . [AMENDED] 1858
340:25-5-198.1. . . . . [AMENDED] 1859
340:25-5-198.2. . . . . [AMENDED] 1860
340:25-5-200. . . . . [AMENDED] (E) 627
340:25-5-200. . . . . [AMENDED] 1860
340:25-5-200.1. . . . . [AMENDED] 1861
340:25-5-200.2. . . . . [AMENDED] 1861
340:25-5-201.1. . . . . [AMENDED] 1862
340:25-5-203. . . . . [AMENDED] 1862
340:25-5-203.1. . . . . [NEW] (E) 628

340:25-5-203.1. [NEW] 1862
340:25-5-211.1. [AMENDED] 1862
340:25-5-212. [AMENDED] 1862
340:25-5-213. [AMENDED] 1863
340:25-5-214. [AMENDED] 1864
340:25-5-215. [AMENDED] 1864
340:25-5-215.1. [AMENDED] 1864
340:25-5-225. [AMENDED] 1864
340:25-5-235. [AMENDED] 1865
340:25-5-244. [AMENDED] 1865
340:25-5-265. [AMENDED] 1865
340:25-5-265.1. [AMENDED] 1866
340:25-5-270. [AMENDED] 1866
340:25-5-285. [NEW] 1867
340:25-5-305. [AMENDED] 1867
340:25-5-312. [AMENDED] (E) 629
340:25-5-312. [AMENDED] 1868
340:25-5-328. [AMENDED] 1868
340:25-5-339. [NEW] 1868
340:25-5-340.1. [AMENDED] 1869
340:25-5-345.1. [AMENDED] 1869
340:25-5-350.2. [AMENDED] 1869
340:25-5-350.3. [AMENDED] 1869
340:25-5-351. [AMENDED] 1870
340:40-3-1. [AMENDED] 1873
340:40-5-1. [AMENDED] (E) 35
340:40-5-1. [AMENDED] 1874
340:40-7-3. [AMENDED] 1878
340:40-7-3.1. [NEW] 1878
340:40-7-4. [AMENDED] 1879
340:40-7-6. [AMENDED] 1879
340:40-7-7. [AMENDED] 1880
340:40-7-8. [AMENDED] 1882
340:40-7-9. [AMENDED] 1885
340:40-7-11. [AMENDED] 1888
340:40-9-1. [AMENDED] 1890
340:40-9-2. [AMENDED] 1891
340:40-13-3. [AMENDED] 1892
340:40-13-5. [AMENDED] 1892
340:45-1-1. [REVOKED] 1003
340:45-1-2. [REVOKED] 1003
340:45-1-3. [REVOKED] 1003
340:45-1-4. [REVOKED] 1004
340:45-1-5. [REVOKED] 1004
340:45-1-6. [REVOKED] 1005
340:45-1-7. [REVOKED] 1005
340:45-1-8. [REVOKED] 1005
340:45-3-1. [REVOKED] 1005
340:45-3-2. [REVOKED] 1006
340:45-3-3. [REVOKED] 1007
340:45-3-4. [REVOKED] 1009
340:45-3-5. [REVOKED] 1010
340:45-3-6. [REVOKED] 1010
340:45-3-7. [REVOKED] 1010
340:45-3-8. [REVOKED] 1010
340:50-5-45. [AMENDED] 1011
340:50-5-64. [AMENDED] 1012
340:50-7-2. [AMENDED] 1013
340:50-7-22. [AMENDED] 1016
340:50-7-30. [AMENDED] 1897
340:50-7-31. [AMENDED] 2665
340:50-7-49. [REVOKED] 2667
340:50-7-50. [REVOKED] 2668
340:50-7-51. [REVOKED] 2668
340:50-7-52. [REVOKED] 2668
340:50-7-53. [REVOKED] 2668
340:50-9-1. [AMENDED] 1899
340:50-9-5. [AMENDED] 1902
340:50-11-20. [AMENDED] 1904
340:50-11-22. [AMENDED] 1904
340:50-11-23. [AMENDED] 1905
340:50-11-25. [AMENDED] 1905
340:50-11-26. [REVOKED] 1905
340:50-11-27. [AMENDED] 1906
340:55-1-1. [REVOKED] 1019
340:55-1-2. [REVOKED] 1019
340:55-1-3. [REVOKED] 1019
340:55-1-4. [REVOKED] 1020
340:55-1-5. [REVOKED] 1020
340:55-1-6. [REVOKED] 1021
340:55-1-7. [REVOKED] 1021
340:55-1-8. [REVOKED] 1021
340:55-1-9. [REVOKED] 1022
340:60-1-1. [AMENDED] 1022
340:60-1-2. [AMENDED] 1022
340:60-1-3. [AMENDED] 1022
340:60-1-4. [REVOKED] 1023
340:60-1-5. [AMENDED] 1023
340:60-1-6. [AMENDED] 1023
340:60-1-7. [REVOKED] 1024
340:65-3-1. [AMENDED] 1907
340:65-3-2. [AMENDED] 1909
340:65-5-1. [AMENDED] 1909
340:75-1-1. [REVOKED] 1024
340:75-1-2. [AMENDED] 1024
340:75-1-3. [REVOKED] 1024
340:75-1-4. [REVOKED] 1024
340:75-1-5. [REVOKED] 1024
340:75-1-10. [REVOKED] 1024
340:75-1-12.2. [AMENDED] 1024
340:75-1-15. [REVOKED] 1024
340:75-1-26. [AMENDED] 1024
340:75-1-29. [NEW] 1024
340:75-1-30. [NEW] 1024
340:75-1-31. [NEW] 1024
340:75-1-110. [REVOKED] 1024
340:75-1-111. [REVOKED] 1024
340:75-1-112. [REVOKED] 1024
340:75-1-113. [AMENDED] 1024
340:75-1-114. [AMENDED] 1024
340:75-1-115. [AMENDED] 1024
340:75-1-116. [AMENDED] 1024
340:75-1-117. [AMENDED] 1024
340:75-1-118. [AMENDED] 1024
340:75-1-119. [AMENDED] 1024
340:75-1-120. [AMENDED] 1024
340:75-1-150. [AMENDED] 1024
340:75-1-151. [AMENDED] 1024
340:75-1-151.2. [AMENDED] 1024
340:75-1-152. [AMENDED] 1024
340:75-1-152.3. [AMENDED] 1024
340:75-1-152.4. [AMENDED] 1024
340:75-1-152.5. [AMENDED] 1024
340:75-1-152.6. [AMENDED] 1024
340:75-1-152.7. [AMENDED] 1024
340:75-1-152.8. [AMENDED] 1024
340:75-1-152.9. [AMENDED] 1024
340:75-1-154. [AMENDED] 1024
340:75-1-155. [AMENDED] 1024
340:75-1-175. [REVOKED] 1024
340:75-1-176. [REVOKED] 1024
340:75-1-179. [REVOKED] 1024
340:75-1-231. [AMENDED] 1024
340:75-3-1. [AMENDED] 1024

340:75-3-2. . . . . [AMENDED] 1024
340:75-3-6. . . . . [AMENDED] 1024
340:75-3-7. . . . . [AMENDED] 1024
340:75-3-7.1. . . . . [AMENDED] 1024
340:75-3-8.1. . . . . [AMENDED] 1024
340:75-3-8.2. . . . . [AMENDED] 1024
340:75-3-8.3. . . . . [AMENDED] 1024
340:75-3-9.1. . . . . [AMENDED] 1024
340:75-3-10.2. . . . . [AMENDED] 1024
340:75-3-10.3. . . . . [AMENDED] 1024
340:75-3-13. . . . . [AMENDED] 1024
340:75-4-9. . . . . [AMENDED] 1024
340:75-4-11. . . . . [REVOKED] 1024
340:75-4-12.1. . . . . [AMENDED] 1024
340:75-4-12.2. . . . . [AMENDED] 1024
340:75-4-13. . . . . [AMENDED] 1024
340:75-6-40.5. . . . . [AMENDED] 1024
340:75-6-47. . . . . [AMENDED] 1024
340:75-6-48. . . . . [AMENDED] 1024
340:75-6-48.3. . . . . [NEW] 1024
340:75-6-85. . . . . [AMENDED] 1024
340:75-6-90. . . . . [REVOKED] 1024
340:75-6-115.3. . . . . [AMENDED] 1024
340:75-6-115.4. . . . . [AMENDED] 1024
340:75-6-115.10. . . . . [AMENDED] 1024
340:75-7-14. . . . . [AMENDED] 1024
340:75-7-18. . . . . [AMENDED] 1024
340:75-7-24. . . . . [AMENDED] 1024
340:75-7-52. . . . . [AMENDED] 1024
340:75-7-65. . . . . [AMENDED] 1024
340:75-8-1. . . . . [AMENDED] 1024
340:75-13-7. . . . . [AMENDED] 1024
340:75-13-8. . . . . [AMENDED] 1024
340:75-13-10. . . . . [AMENDED] 1024
340:75-13-18. . . . . [AMENDED] 1024
340:75-13-26. . . . . [AMENDED] 1024
340:75-13-28. . . . . [AMENDED] 1024
340:75-13-29. . . . . [AMENDED] 1024
340:75-13-64. . . . . [AMENDED] 1024
340:75-13-65. . . . . [AMENDED] 1024
340:75-13-79. . . . . [AMENDED] 1024
340:75-13-81. . . . . [AMENDED] 1024
340:75-15-6. . . . . [AMENDED] 1024
340:75-15-7. . . . . [AMENDED] 1024
340:75-15-8. . . . . [AMENDED] 1024
340:75-15-41. . . . . [AMENDED] 1024
340:75-15-42. . . . . [AMENDED] 1024
340:75-15-43. . . . . [AMENDED] 1024
340:75-15-45. . . . . [AMENDED] 1024
340:75-15-85. . . . . [AMENDED] 1024
340:75-15-87. . . . . [AMENDED] 1024
340:75-15-107. . . . . [AMENDED] 1024
340:75-15-126. . . . . [AMENDED] 1024
340:75-15-128.1. . . . . [AMENDED] 1024
340:75-15-128.4. . . . . [AMENDED] 1024
340:75-18-2. . . . . [AMENDED] 1024
340:75-18-10. . . . . [AMENDED] 1024
340:75-18-13. . . . . [AMENDED] 1024
340:75-19-26. . . . . [AMENDED] 1024
340:75-19-26.1. . . . . [NEW] 1024
340:75-19-27. . . . . [REVOKED] 1024
340:75-19-28. . . . . [AMENDED] 1024
340:75-19-29. . . . . [AMENDED] 1024
340:75-19-30. . . . . [AMENDED] 1024
340:75-19-32. . . . . [AMENDED] 1024
340:75-19-33. . . . . [AMENDED] 1024
340:100-1-2. . . . . [AMENDED] 1027
340:100-3-4. . . . . [AMENDED] 1032
340:100-3-4.1. . . . . [REVOKED] 1034
340:100-3-5.1. . . . . [AMENDED] 1036
340:100-3-27. . . . . [AMENDED] 1038
340:100-3-27.1. . . . . [AMENDED] 1041
340:100-3-28. . . . . [AMENDED] 1043
340:100-3-29. . . . . [AMENDED] 1043
340:100-3-36. . . . . [NEW] 1911
340:100-3-38. . . . . [AMENDED] 1911
340:100-5-22.1. . . . . [AMENDED] 1044
340:100-5-22.3. . . . . [REVOKED] 1048
340:100-5-22.6. . . . . [NEW] 1914
340:100-5-26.3. . . . . [NEW] 1048
340:100-5-29. . . . . [AMENDED] 1050
340:100-5-52. . . . . [AMENDED] 1052
340:100-6-76. . . . . [AMENDED] 1917
340:100, App. D. . . . . [REVOKED] 1054
340:100, App. J. . . . . [REVOKED] 1056
340:100, App. K. . . . . [REVOKED] 1060
340:105-1-4. . . . . [AMENDED] 1062
340:105-7-2. . . . . [AMENDED] (E) 394
340:105-7-2. . . . . [AMENDED] 1063
340:105-7-7. . . . . [AMENDED] 1065
340:105-7-8. . . . . [AMENDED] 1066
340:105-10-3. . . . . [AMENDED] 1066
340:105-10-11. . . . . [AMENDED] 1070
340:105-10-12. . . . . [AMENDED] 1070
340:105-10-15. . . . . [AMENDED] 1071
340:105-10-19. . . . . [AMENDED] 1071
340:105-10-21. . . . . [AMENDED] 1072
340:105-10-24. . . . . [AMENDED] 1073
340:105-10-25. . . . . [AMENDED] 1073
340:105-10-41. . . . . [AMENDED] 1073
340:105-10-51. . . . . [AMENDED] 1074
340:105-10-54. . . . . [AMENDED] 1076
340:105-10-59. . . . . [AMENDED] 1078
340:105-10-63. . . . . [AMENDED] 1078
340:105-10-68. . . . . [AMENDED] 1078
340:105-10-70. . . . . [AMENDED] 1078
340:105-10-72. . . . . [AMENDED] 1079
340:105-10-75. . . . . [AMENDED] 1079
340:105-10-79. . . . . [AMENDED] 1080
340:105-10-82. . . . . [AMENDED] 1080
340:105-10-84. . . . . [AMENDED] 1081
340:105-10-90.1. . . . . [AMENDED] 1081
340:105-10-91. . . . . [AMENDED] 1082
340:105-10-95. . . . . [AMENDED] 1082
340:105-10-97. . . . . [AMENDED] 1084
340:105-10-101. . . . . [AMENDED] 1084
340:105-10-105.1. . . . . [AMENDED] 2669
340:105-10-114. . . . . [AMENDED] (E) 396
340:105-10-114. . . . . [AMENDED] 1086
340:105-10-120. . . . . [AMENDED] 1086
340:105-10-121. . . . . [AMENDED] 1086
340:105-11-233. . . . . [AMENDED] 1087
340:105-11-234. . . . . [AMENDED] 1087
340:105-11-240. . . . . [AMENDED] 1088
340:105-11-245. . . . . [AMENDED] 1089
340:105-11-248. . . . . [AMENDED] 1090
340:105-11-249. . . . . [AMENDED] 1090
340:105-11-250. . . . . [AMENDED] 1091
340:105-11-251. . . . . [AMENDED] 1091
340:105-11-252. . . . . [AMENDED] 1091
340:105-11-255. . . . . [AMENDED] 1092
340:110-1-4.1. . . . . [AMENDED] 1092
340:110-1-5. . . . . [AMENDED] 1092
340:110-1-6. . . . . [AMENDED] 1092

340:110-1-8. . . . . [AMENDED] 1092
340:110-1-8.1. . . . . [AMENDED] 1092
340:110-1-8.3. . . . . [AMENDED] 1092
340:110-1-9. . . . . [AMENDED] 1092
340:110-1-9.1. . . . . [AMENDED] 1092
340:110-1-9.2. . . . . [AMENDED] 1092
340:110-1-9.3. . . . . [AMENDED] 1092
340:110-1-11. . . . . [AMENDED] 1092
340:110-1-17. . . . . [AMENDED] 1092
340:110-3-29. . . . . [AMENDED] 1092
340:110-3-49.5. . . . . [AMENDED] 1092
340:110-3-87. . . . . [AMENDED] 1092
340:110-3-154.5. . . . . [AMENDED] 1092
340:110-3-239. . . . . [AMENDED] 1092
340:110-5-1. . . . . [AMENDED] 1092
340:110-5-2. . . . . [AMENDED] 1092
340:110-5-3. . . . . [AMENDED] 1092
340:110-5-4. . . . . [AMENDED] 1092
340:110-5-6. . . . . [AMENDED] 1092
340:110-5-7. . . . . [AMENDED] 1092
340:110-5-8. . . . . [AMENDED] 1092
340:110-5-9. . . . . [AMENDED] 1092
340:110-5-10. . . . . [AMENDED] 1092
340:110-5-11. . . . . [AMENDED] 1092
340:110-5-11.1. . . . . [NEW] 1092
340:110-5-12. . . . . [AMENDED] 1092
340:110-5-13. . . . . [AMENDED] 1092
340:110-5-14. . . . . [AMENDED] 1092
340:110-5-24. . . . . [AMENDED] 1092
340:110-5-25. . . . . [AMENDED] 1092
340:110-5-27. . . . . [AMENDED] 1092
340:110-5-29. . . . . [AMENDED] 1092
340:110-5-30. . . . . [AMENDED] 1092
340:110-5-31. . . . . [AMENDED] 1092
340:110-5-32. . . . . [AMENDED] 1092
340:110-5-33. . . . . [AMENDED] 1092
340:110-5-34. . . . . [AMENDED] 1092
340:110-5-35. . . . . [AMENDED] 1092
340:110-5-36. . . . . [AMENDED] 1092
340:110-5-37. . . . . [AMENDED] 1092
340:110-5-37.1. . . . . [AMENDED] 1092
340:110-5-38. . . . . [AMENDED] 1092
340:110-5-55. . . . . [AMENDED] 1092
340:110-5-56. . . . . [AMENDED] 1092
340:110-5-57. . . . . [AMENDED] 1092
340:110-5-58. . . . . [AMENDED] 1092
340:110-5-59. . . . . [AMENDED] 1092
340:110-5-60. . . . . [AMENDED] 1092
340:110-5-61. . . . . [AMENDED] 1092
340:110-5-61.1. . . . . [NEW] 1092
340:110-5-62. . . . . [AMENDED] 1092
340:110-5-63. . . . . [AMENDED] 1092
340:110-5-115. . . . . [AMENDED] 1092
340:110-5-117. . . . . [AMENDED] 1092
340:110-5-118. . . . . [AMENDED] 1092
340:110-5-119. . . . . [AMENDED] 1092
340:110-5-120. . . . . [AMENDED] 1092
340:110-5-121. . . . . [AMENDED] 1092
340:110-5-122. . . . . [AMENDED] 1092
340:110-5-123. . . . . [AMENDED] 1092
340:110-5-124. . . . . [AMENDED] 1092
345:10-1-2. . . . . [NEW] (E) 630
345:10-3-1. . . . . [AMENDED] (E) 630
345:10-5-2. . . . . [AMENDED] (E) 631
360:10-3-4. . . . . [AMENDED] 1918
360:10-3-20. . . . . [AMENDED] 1918
360:10-3-33. . . . . [NEW] 1919
360:10-5-75. . . . . [AMENDED] 1919
360:10-5-77. . . . . [AMENDED] 1919
360:15-1-2. . . . . [AMENDED] 1920
360:15-1-12. . . . . [AMENDED] 1921
360:15-1-18. . . . . [AMENDED] 1921
365:1-1-2. . . . . [AMENDED] 2670
365:1-5-1. . . . . [AMENDED] 2672
365:1-5-2. . . . . [AMENDED] 2672
365:1-5-3. . . . . [AMENDED] 2672
365:1-5-4. . . . . [AMENDED] 2672
365:10-5-170. . . . . [AMENDED] 2673
365:10-5-171. . . . . [AMENDED] 2673
365:10-5-172. . . . . [AMENDED] 2673
365:10-5-173. . . . . [AMENDED] 2674
365:10-5-174. . . . . [REVOKED] 2675
365:10-5-175. . . . . [REVOKED] 2676
365:10-5-176. . . . . [AMENDED] 2678
365:10-5-177. . . . . [AMENDED] 2682
365:10-5-178. . . . . [REVOKED] 2683
365:10-23-1. . . . . [NEW] 2684
365:10-23-2. . . . . [NEW] 2685
365:10, App. S. . . . . [REVOKED] 2686
365:10, App. S. . . . . [NEW] 2686
365:10, App. Z. . . . . [REVOKED] 2726
365:10, App. Z. . . . . [NEW] 2726
365:10, App. GG. . . . . [NEW] 2729
365:15-1-3. . . . . [AMENDED] 2730
365:15-7-3. . . . . [AMENDED] 2732
365:15-7-14. . . . . [AMENDED] 2733
365:15-7-29. . . . . [NEW] 2733
365:15, App. D. . . . . [REVOKED] 2734
365:15, App. D. . . . . [NEW] 2734
365:25-3-1. . . . . [AMENDED] 2735
365:25-5-41. . . . . [AMENDED] 2738
365:25-17-1. . . . . [NEW] 2739
365:25-17-2. . . . . [NEW] 2739
365:25-17-3. . . . . [NEW] 2739
365:25-17-4. . . . . [NEW] 2739
365:25-17-5. . . . . [NEW] 2739
365:25-17-6. . . . . [NEW] 2739
365:25-17-7. . . . . [NEW] 2740
365:25-17-8. . . . . [NEW] 2741
365:25-17-9. . . . . [NEW] 2741
365:25-19-1. . . . . [NEW] 2741
365:25-19-2. . . . . [NEW] 2741
365:25-19-3. . . . . [NEW] 2741
365:25-19-4. . . . . [NEW] 2741
365:25-19-5. . . . . [NEW] 2742
365:25-19-6. . . . . [NEW] 2743
365:25-19-7. . . . . [NEW] 2743
365:25-19-8. . . . . [NEW] 2743
365:25-19-9. . . . . [NEW] 2743
365:25, App. S. . . . . [NEW] 2744
365:40-5-44. . . . . [AMENDED] 2758
377:1-1-5. . . . . [AMENDED] 2759
377:3-13-42. . . . . [AMENDED] 2761
377:3-13-43. . . . . [AMENDED] 2762
377:3-13-86. . . . . [AMENDED] 2765
377:3-13-88. . . . . [AMENDED] 2765
377:25-5-3. . . . . [REVOKED] 2767
377:25-7-1. . . . . [REVOKED] 2767
377:25-7-3. . . . . [AMENDED] 2767
377:25-7-4. . . . . [REVOKED] 2768
377:25-7-27. . . . . [AMENDED] 2768
377:25-7-28. . . . . [AMENDED] 2768
377:25-7-29. . . . . [AMENDED] 2768
377:30-1-1. . . . . [AMENDED] 2770

377:30-3-1. . . . . [REVOKED] 2770
377:35-11-2. . . . . [REVOKED] 2771
377:35-11-3. . . . . [AMENDED] 2771
380:25-7-18. . . . . [AMENDED] 1411
380:40-1-5. . . . . [AMENDED] 2772
380:40-1-14. . . . . [AMENDED] 2772
380:40-1-23. . . . . [NEW] 2773
390:1-1-2.1. . . . . [NEW] 1922
390:1-1-9. . . . . [NEW] 1922
390:1-1-10. . . . . [NEW] 1922
390:1-1-11. . . . . [NEW] 1923
390:2-1-8. . . . . [AMENDED] 1923
390:10-1-2. . . . . [AMENDED] 1924
390:10-1-5. . . . . [AMENDED] 1924
390:15-1-2. . . . . [AMENDED] 1925
390:15-1-3. . . . . [AMENDED] 1926
390:15-1-9. . . . . [AMENDED] 1926
390:15-1-13. . . . . [AMENDED] 1926
390:15-1-19. . . . . [AMENDED] 1927
390:15-3-3. . . . . [AMENDED] 1928
390:15-3-6. . . . . [AMENDED] 1928
390:15-3-7. . . . . [AMENDED] 1928
390:15, App. A. . . . . [REVOKED] 1929
390:25-1-8. . . . . [AMENDED] 1930
390:30-1-4. . . . . [AMENDED] 1931
390:30-1-6. . . . . [AMENDED] 1931
390:30-1-7. . . . . [AMENDED] 1932
390:31-1-1. . . . . [NEW] 1932
390:31-1-2. . . . . [NEW] 1932
390:31-1-3. . . . . [NEW] 1933
390:31-1-4. . . . . [NEW] 1933
390:31-1-5. . . . . [NEW] 1933
390:31-1-6. . . . . [NEW] 1933
390:31-1-7. . . . . [NEW] 1934
390:35-1-4. . . . . [AMENDED] 1934
390:35-5-2. . . . . [AMENDED] 1935
390:35-5-3. . . . . [AMENDED] 1936
390:35-5-5. . . . . [AMENDED] 1936
390:35-7-1. . . . . [AMENDED] 1937
390:35-7-4. . . . . [AMENDED] 1937
390:35-11-3. . . . . [AMENDED] 1937
390:35-13-2. . . . . [AMENDED] 1938
390:40-1-4. . . . . [AMENDED] 1939
390:40-7-1. . . . . [AMENDED] 1939
390:45-1-3. . . . . [AMENDED] 1939
390:45-1-4. . . . . [AMENDED] 1940
390:45-1-5. . . . . [AMENDED] 1940
390:45-1-6. . . . . [AMENDED] 1940
390:50-1-4. . . . . [AMENDED] 1941
429:1-1-1. . . . . [NEW] (E) 171
429:1-1-1. . . . . [RESERVED] 2774
429:1-1-2. . . . . [NEW] (E) 171
429:1-1-2. . . . . [NEW] 2774
429:1-1-3. . . . . [NEW] (E) 171
429:1-1-3. . . . . [NEW] 2774
429:1-1-4. . . . . [NEW] (E) 173
429:1-1-4. . . . . [NEW] 2777
429:1-1-5. . . . . [NEW] (E) 173
429:1-1-5. . . . . [NEW] 2777
429:1-1-6. . . . . [NEW] 2777
429:10-1-1. . . . . [NEW] (E) 174
429:10-1-1. . . . . [RESERVED] 2778
429:10-1-2. . . . . [NEW] (E) 174
429:10-1-2. . . . . [NEW] 2778
429:10-1-3. . . . . [NEW] (E) 177
429:10-1-3. . . . . [NEW] (E) 179
429:10-1-3. . . . . [NEW] 2781
429:10-1-4. . . . . [NEW] (E) 177
429:10-1-4. . . . . [NEW] (E) 180
429:10-1-4. . . . . [NEW] 2781
429:10-1-5. . . . . [NEW] (E) 177
429:10-1-5. . . . . [NEW] 2781
429:10-1-6. . . . . [NEW] (E) 178
429:10-1-6. . . . . [NEW] 2781
429:10-1-7. . . . . [NEW] (E) 178
429:10-1-7. . . . . [NEW] 2782
429:10-1-8. . . . . [NEW] (E) 178
429:10-1-8. . . . . [NEW] 2782
429:10-1-9. . . . . [NEW] (E) 178
429:10-1-9. . . . . [NEW] 2782
429:10-1-10. . . . . [NEW] (E) 178
429:10-1-10. . . . . [NEW] 2782
429:10-1-11. . . . . [NEW] (E) 179
429:10-1-11. . . . . [NEW] 2782
429:10-1-12. . . . . [NEW] (E) 179
429:10-1-12. . . . . [NEW] 2783
429:15-1-1. . . . . [NEW] (E) 180
429:15-1-1. . . . . [RESERVED] 2784
429:15-1-2. . . . . [NEW] (E) 180
429:15-1-2. . . . . [NEW] 2784
429:15-1-3. . . . . [NEW] (E) 183
429:15-1-3. . . . . [NEW] 2786
429:15-1-4. . . . . [NEW] (E) 183
429:15-1-4. . . . . [NEW] 2786
429:15-1-5. . . . . [NEW] (E) 183
429:15-1-5. . . . . [NEW] 2786
429:15-1-6. . . . . [NEW] (E) 183
429:15-1-6. . . . . [NEW] 2787
429:15-1-7. . . . . [NEW] (E) 184
429:15-1-7. . . . . [NEW] 2787
429:15-1-8. . . . . [NEW] (E) 184
429:15-1-8. . . . . [NEW] 2787
429:15-1-9. . . . . [NEW] (E) 184
429:15-1-9. . . . . [NEW] 2787
429:15-1-10. . . . . [NEW] (E) 184
429:15-1-10. . . . . [NEW] 2787
429:15-1-11. . . . . [NEW] (E) 184
429:15-1-11. . . . . [NEW] 2787
429:15-1-12. . . . . [NEW] (E) 184
429:15-1-12. . . . . [NEW] 2787
429:15-1-13. . . . . [NEW] (E) 184
429:15-1-13. . . . . [NEW] 2788
429:15-1-14. . . . . [NEW] (E) 185
429:15-1-14. . . . . [NEW] 2788
429:15, App. A. . . . . [NEW] 2789
429:15, App. A. . . . . [NEW] (E) 186
429:15, App. B. . . . . [NEW] 2790
429:15, App. B. . . . . [NEW] (E) 187
429:20-1-1. . . . . [NEW] (E) 188
429:20-1-1. . . . . [RESERVED] 2791
429:20-1-2. . . . . [NEW] (E) 188
429:20-1-2. . . . . [NEW] 2791
429:20-1-3. . . . . [NEW] (E) 190
429:20-1-3. . . . . [NEW] 2794
429:20-1-4. . . . . [NEW] (E) 190
429:20-1-4. . . . . [NEW] 2794
429:20-1-5. . . . . [NEW] (E) 190
429:20-1-5. . . . . [NEW] 2794
429:20-1-6. . . . . [NEW] (E) 191
429:20-1-6. . . . . [NEW] 2794
429:20-1-7. . . . . [NEW] (E) 191
429:20-1-7. . . . . [NEW] 2794
429:20-1-8. . . . . [NEW] (E) 191
429:20-1-8. . . . . [NEW] 2794

429:20-1-9. . . . . [NEW] (E) 191
429:20-1-9. . . . . [NEW] 2795
429:20-1-10. . . . . [NEW] (E) 191
429:20-1-10. . . . . [NEW] 2795
429:20-1-11. . . . . [NEW] (E) 191
429:20-1-11. . . . . [NEW] 2795
429:20-1-12. . . . . [NEW] (E) 191
429:20-1-12. . . . . [NEW] 2795
429:20-1-13. . . . . [NEW] (E) 191
429:20-1-13. . . . . [NEW] 2795
429:20-1-14. . . . . [NEW] (E) 192
429:20-1-14. . . . . [NEW] 2795
429:20-1-15. . . . . [NEW] (E) 192
429:20-1-15. . . . . [NEW] 2795
429:20-1-16. . . . . [NEW] (E) 192
429:20-1-16. . . . . [NEW] 2795
429:20-1-17. . . . . [NEW] (E) 192
429:20-1-17. . . . . [NEW] 2795
429:20, App. A. . . . . [NEW] 2796
429:20, App. A. . . . . [NEW] (E) 193
429:20, App. B. . . . . [NEW] 2797
429:20, App. B. . . . . [NEW] (E) 194
435:1-1-7. . . . . [AMENDED] 1094
435:10-4-6. . . . . [AMENDED] 1097
435:10-4-7. . . . . [AMENDED] 1098
435:10-11-3.1. . . . . [AMENDED] 1098
435:20-3-1.1. . . . . [AMENDED] 1098
435:20-3-6. . . . . [AMENDED] 1101
435:20-9-2. . . . . [AMENDED] 1102
435:45-3-5. . . . . [AMENDED] 1103
435:45-5-1. . . . . [AMENDED] (E) 822
435:55-3-6. . . . . [AMENDED] 1103
450:1-1-1.1. . . . . [AMENDED] 1942
450:1-1-2. . . . . [AMENDED] 1943
450:1-1-5. . . . . [AMENDED] 1943
450:1-1-7. . . . . [AMENDED] 1943
450:1-3-1. . . . . [AMENDED] 1944
450:1-3-3. . . . . [AMENDED] 1944
450:1-3-14. . . . . [AMENDED] 1944
450:1-3-15. . . . . [AMENDED] 1944
450:1-3-21. . . . . [AMENDED] 1944
450:1-3-22. . . . . [AMENDED] 1944
450:1-5-1. . . . . [AMENDED] 1944
450:1-5-5. . . . . [AMENDED] 1945
450:1-5-5.4. . . . . [AMENDED] 1945
450:1-5-6. . . . . [AMENDED] 1945
450:1-5-7. . . . . [AMENDED] 1945
450:1-5-8. . . . . [AMENDED] 1945
450:1-5-9. . . . . [AMENDED] 1945
450:1-5-10. . . . . [AMENDED] 1946
450:1-5-11. . . . . [AMENDED] 1946
450:1-5-14. . . . . [AMENDED] 1946
450:1-7-1. . . . . [AMENDED] 1947
450:1-7-4.1. . . . . [NEW] 1947
450:1-9-1. . . . . [AMENDED] 1947
450:1-9-3. . . . . [AMENDED] 1947
450:1-9-4. . . . . [AMENDED] 1947
450:1-9-5. . . . . [AMENDED] 1947
450:1-9-6. . . . . [AMENDED] 1948
450:1-9-7. . . . . [AMENDED] 1948
450:1-9-8. . . . . [AMENDED] 1950
450:1-9-9. . . . . [AMENDED] 1951
450:1-9-9.1. . . . . [NEW] 1951
450:1-9-10. . . . . [AMENDED] 1951
450:1-9-12. . . . . [AMENDED] 1951
450:1-11-3. . . . . [AMENDED] 1951
450:1-11-4. . . . . [NEW] 1952
450:1-11-5. . . . . [NEW] 1952
450:1-11-6. . . . . [NEW] 1952
450:1-11-7. . . . . [NEW] 1952
450:1-11-8. . . . . [NEW] 1952
450:15-1-2. . . . . [AMENDED] 1412
450:15-3-2. . . . . [AMENDED] 1415
450:15-3-14. . . . . [AMENDED] 1415
450:15-3-16. . . . . [AMENDED] 1415
450:15-3-81. . . . . [AMENDED] 1416
450:15-3-82. . . . . [AMENDED] 1417
450:15-7-3. . . . . [AMENDED] 1417
450:15-7-11. . . . . [AMENDED] 1417
450:15-7-15. . . . . [AMENDED] 1417
450:16-1-2. . . . . [AMENDED] 1419
450:16-13-18. . . . . [AMENDED] 1420
450:16-13-46. . . . . [AMENDED] 1420
450:16-21-1. . . . . [AMENDED] 1421
450:16-21-4. . . . . [AMENDED] 1421
450:17-1-2. . . . . [AMENDED] 1422
450:17-3-1. . . . . [AMENDED] 1426
450:17-3-21. . . . . [AMENDED] 1426
450:17-3-41. . . . . [AMENDED] 1427
450:17-3-43. . . . . [AMENDED] 1427
450:17-3-61. . . . . [AMENDED] 1427
450:17-3-62. . . . . [AMENDED] 1427
450:17-3-81. . . . . [AMENDED] 1427
450:17-3-84. . . . . [AMENDED] 1428
450:17-3-101. . . . . [AMENDED] 1428
450:17-3-101.1. . . . . [AMENDED] 1428
450:17-3-103. . . . . [AMENDED] 1429
450:17-3-141. . . . . [AMENDED] 1429
450:17-3-144. . . . . [AMENDED] 1430
450:17-5-34. . . . . [AMENDED] 1430
450:17-5-45. . . . . [AMENDED] 1430
450:17-5-56. . . . . [AMENDED] 1431
450:17-5-95. . . . . [AMENDED] 1431
450:17-5-96. . . . . [AMENDED] 1431
450:17-5-98. . . . . [AMENDED] 1432
450:17-7-3. . . . . [AMENDED] 1432
450:17-7-5. . . . . [AMENDED] 1432
450:17-7-5.1. . . . . [NEW] 1433
450:17-7-8. . . . . [AMENDED] 1433
450:17-7-10. . . . . [AMENDED] 1434
450:17-13-1. . . . . [AMENDED] 1434
450:17-19-2. . . . . [AMENDED] 1435
450:17-21-2. . . . . [AMENDED] 1435
450:17-21-3. . . . . [AMENDED] 1435
450:17-25-2. . . . . [AMENDED] 1435
450:18-1-1. . . . . [AMENDED] 1953
450:18-1-2. . . . . [AMENDED] 1953
450:18-3-1. . . . . [AMENDED AND RENUMBERED TO 450:18-13-1] 1953
450:18-3-2. . . . . [AMENDED AND RENUMBERED TO 450:18-13-2] 1953
450:18-3-3. . . . . [AMENDED AND RENUMBERED TO 450:18-13-3] 1953
450:18-3-21. . . . . [AMENDED AND RENUMBERED TO 450:18-13-21] 1953
450:18-3-22. . . . . [AMENDED AND RENUMBERED TO 450:18-13-22] 1953
450:18-3-23. . . . . [AMENDED AND RENUMBERED TO 450:18-13-23] 1953
450:18-3-41. . . . . [AMENDED AND RENUMBERED TO 450:18-13-41] 1953
450:18-3-42. . . . . [AMENDED AND RENUMBERED TO 450:18-13-42] 1953

450:18-3-43. . . . . [AMENDED AND RENUMBERED TO 450:18-13-43] 1953
450:18-3-44. . . . . [AMENDED AND RENUMBERED TO 450:18-13-44] 1953
450:18-3-61. . . . . [AMENDED AND RENUMBERED TO 450:18-13-61] 1953
450:18-3-62. . . . . [AMENDED AND RENUMBERED TO 450:18-13-62] 1953
450:18-3-63. . . . . [AMENDED AND RENUMBERED TO 450:18-13-63] 1953
450:18-3-81. . . . . [AMENDED AND RENUMBERED TO 450:18-13-81] 1953
450:18-3-82. . . . . [AMENDED AND RENUMBERED TO 450:18-13-82] 1953
450:18-3-83. . . . . [AMENDED AND RENUMBERED TO 450:18-13-83] 1953
450:18-3-101. . . . . [AMENDED AND RENUMBERED TO 450:18-13-101] 1953
450:18-3-102. . . . . [AMENDED AND RENUMBERED TO 450:18-13-102] 1953
450:18-3-103. . . . . [AMENDED AND RENUMBERED TO 450:18-13-103] 1953
450:18-3-121. . . . . [AMENDED AND RENUMBERED TO 450:18-13-121] 1953
450:18-3-122. . . . . [AMENDED AND RENUMBERED TO 450:18-13-122] 1953
450:18-3-123. . . . . [AMENDED AND RENUMBERED TO 450:18-13-123] 1953
450:18-3-141. . . . . [AMENDED AND RENUMBERED TO 450:18-13-141] 1953
450:18-3-142. . . . . [AMENDED AND RENUMBERED TO 450:18-13-142] 1953
450:18-3-143. . . . . [AMENDED AND RENUMBERED TO 450:18-13-143] 1953
450:18-3-161. . . . . [AMENDED AND RENUMBERED TO 450:18-13-161] 1953
450:18-3-162. . . . . [AMENDED AND RENUMBERED TO 450:18-13-162] 1953
450:18-3-163. . . . . [AMENDED AND RENUMBERED TO 450:18-13-163] 1953
450:18-3-181. . . . . [AMENDED AND RENUMBERED TO 450:18-13-181] 1953
450:18-3-182. . . . . [AMENDED AND RENUMBERED TO 450:18-13-182] 1953
450:18-3-183. . . . . [AMENDED AND RENUMBERED TO 450:18-13-183] 1953
450:18-3-190. . . . . [AMENDED AND RENUMBERED TO 450:18-13-190] 1953
450:18-3-191. . . . . [AMENDED AND RENUMBERED TO 450:18-13-191] 1953
450:18-3-192. . . . . [AMENDED AND RENUMBERED TO 450:18-13-192] 1953
450:18-3-201. . . . . [AMENDED AND RENUMBERED TO 450:18-13-201] 1953
450:18-3-202. . . . . [AMENDED AND RENUMBERED TO 450:18-13-202] 1953
450:18-3-203. . . . . [AMENDED AND RENUMBERED TO 450:18-13-203] 1953
450:18-3-241. . . . . [AMENDED AND RENUMBERED TO 450:18-13-241] 1953
450:18-3-242. . . . . [AMENDED AND RENUMBERED TO 450:18-13-242] 1953
450:18-5-1. . . . . [AMENDED] 1953
450:18-5-3.1. . . . . [AMENDED] 1953
450:18-5-3.2. . . . . [AMENDED] 1953
450:18-5-5. . . . . [AMENDED] 1953
450:18-7-1. . . . . [NEW] 1953
450:18-7-1.1. . . . . [NEW] 1953
450:18-7-2. . . . . [AMENDED] 1953
450:18-7-21. . . . . [AMENDED] 1953
450:18-7-41. . . . . [AMENDED] 1953
450:18-7-61. . . . . [AMENDED] 1953
450:18-7-62. . . . . [AMENDED] 1953
450:18-7-63. . . . . [AMENDED] 1953
450:18-7-64. . . . . [NEW] 1953
450:18-7-65. . . . . [NEW] 1953
450:18-7-81. . . . . [AMENDED] 1953
450:18-7-82. . . . . [AMENDED] 1953
450:18-7-84. . . . . [AMENDED] 1953
450:18-7-101. . . . . [AMENDED] 1953
450:18-7-121. . . . . [AMENDED] 1953
450:18-7-145. . . . . [AMENDED] 1953
450:18-9-2. . . . . [AMENDED] 1953
450:18-9-22. . . . . [AMENDED] 1953
450:18-11-1. . . . . [AMENDED] 1953
450:18-13-1. . . . . [NEW] 1953
450:18-13-2. . . . . [NEW] 1953
450:18-13-3. . . . . [NEW] 1953
450:18-13-4. . . . . [NEW] 1953
450:18-13-21. . . . . [NEW] 1953
450:18-13-22. . . . . [NEW] 1953
450:18-13-23. . . . . [NEW] 1953
450:18-13-41. . . . . [NEW] 1953
450:18-13-42. . . . . [NEW] 1953
450:18-13-43. . . . . [NEW] 1953
450:18-13-44. . . . . [NEW] 1953
450:18-13-61. . . . . [NEW] 1953
450:18-13-62. . . . . [NEW] 1953
450:18-13-63. . . . . [NEW] 1953
450:18-13-81. . . . . [NEW] 1953
450:18-13-82. . . . . [NEW] 1953
450:18-13-83. . . . . [NEW] 1953
450:18-13-101. . . . . [NEW] 1953
450:18-13-102. . . . . [NEW] 1953
450:18-13-103. . . . . [NEW] 1953
450:18-13-121. . . . . [NEW] 1953
450:18-13-122. . . . . [NEW] 1953
450:18-13-123. . . . . [NEW] 1953
450:18-13-141. . . . . [NEW] 1953
450:18-13-142. . . . . [NEW] 1953
450:18-13-143. . . . . [NEW] 1953
450:18-13-161. . . . . [NEW] 1953
450:18-13-162. . . . . [NEW] 1953
450:18-13-163. . . . . [NEW] 1953
450:18-13-181. . . . . [NEW] 1953
450:18-13-182. . . . . [NEW] 1953
450:18-13-183. . . . . [NEW] 1953
450:18-13-190. . . . . [NEW] 1953
450:18-13-191. . . . . [NEW] 1953
450:18-13-192. . . . . [NEW] 1953
450:18-13-201. . . . . [NEW] 1953
450:18-13-202. . . . . [NEW] 1953
450:18-13-203. . . . . [NEW] 1953
450:18-13-241. . . . . [NEW] 1953
450:18-13-242. . . . . [NEW] 1953
450:21-1-3. . . . . [AMENDED] 1954
450:21-1-5. . . . . [AMENDED] 1955
450:21-1-6. . . . . [AMENDED] 1955
450:21-1-8. . . . . [AMENDED] 1956
450:21-1-10. . . . . [AMENDED] 1956
450:21-3-1.1. . . . . [NEW] 1957
450:22-1-3. . . . . [AMENDED] 1958
450:22-1-6. . . . . [AMENDED] 1959
450:22-1-11. . . . . [AMENDED] 1959

450:22-1-12. . . . . [AMENDED] 1960
450:22-1-15. . . . . [AMENDED] 1961
450:22-1-15.1. . . . . [NEW] 1962
450:23-1-2. . . . . [AMENDED] 1436
450:23-3-1. . . . . [AMENDED] 1438
450:23-3-2. . . . . [AMENDED] 1438
450:23-3-3. . . . . [AMENDED] 1438
450:23-3-4. . . . . [AMENDED] 1438
450:23-3-5. . . . . [AMENDED] 1439
450:23-5-4. . . . . [AMENDED] 1439
450:23-5-5. . . . . [AMENDED] 1440
450:23-5-7.1. . . . . [AMENDED] 1440
450:23-5-8. . . . . [AMENDED] 1440
450:23-11-1. . . . . [AMENDED] 1440
450:23-17-2. . . . . [AMENDED] 1441
450:23-19-2. . . . . [AMENDED] 1441
450:23-19-3. . . . . [AMENDED] 1441
450:30-15-2. . . . . [AMENDED] 1962
450:30-15-3. . . . . [AMENDED] 1963
450:50-1-2. . . . . [AMENDED] 1442
450:50-3-1. . . . . [AMENDED] 1442
450:50-3-2. . . . . [AMENDED] 1443
450:50-5-1. . . . . [AMENDED] 1443
450:50-5-2. . . . . [AMENDED] 1444
450:50-5-3. . . . . [AMENDED] 1444
450:50-5-4. . . . . [AMENDED] 1445
450:50-7-4. . . . . [AMENDED] 1445
450:55-1-2. . . . . [AMENDED] 1446
450:55-3-2. . . . . [AMENDED] 1447
450:55-3-5. . . . . [AMENDED] 1448
450:55-3-6. . . . . [AMENDED] 1448
450:55-3-7. . . . . [AMENDED] 1449
450:55-3-9. . . . . [AMENDED] 1449
450:55-3-10. . . . . [AMENDED] 1449
450:55-5-4. . . . . [AMENDED] 1451
450:55-5-5. . . . . [AMENDED] 1452
450:55-11-1. . . . . [AMENDED] 1452
450:55-11-2. . . . . [AMENDED] 1452
450:55-15-2. . . . . [AMENDED] 1452
450:55-17-2. . . . . [AMENDED] 1453
450:55-17-3. . . . . [AMENDED] 1453
450:60-1-1. . . . . [NEW] (E) 1618
450:60-1-2. . . . . [NEW] (E) 1618
450:60-1-3. . . . . [NEW] (E) 1619
450:60-1-4. . . . . [NEW] (E) 1619
450:60-1-5. . . . . [NEW] (E) 1619
450:60-3-1. . . . . [NEW] (E) 1619
450:60-3-2. . . . . [NEW] (E) 1619
450:60-3-3. . . . . [NEW] (E) 1619
450:60-3-4. . . . . [NEW] (E) 1619
450:60-3-5. . . . . [NEW] (E) 1620
450:60-3-6. . . . . [NEW] (E) 1620
450:60-3-7. . . . . [NEW] (E) 1620
450:60-3-8. . . . . [NEW] (E) 1620
450:60-3-9. . . . . [NEW] (E) 1620
450:60-3-10. . . . . [NEW] (E) 1620
450:60-3-11. . . . . [NEW] (E) 1620
450:60-3-12. . . . . [NEW] (E) 1620
450:60-3-13. . . . . [NEW] (E) 1620
450:60-3-14. . . . . [NEW] (E) 1620
450:60-3-15. . . . . [NEW] (E) 1621
450:60-3-16. . . . . [NEW] (E) 1621
450:60-5-1. . . . . [NEW] (E) 1621
450:60-5-2. . . . . [NEW] (E) 1621
450:60-5-3. . . . . [NEW] (E) 1622
450:60-7-1. . . . . [NEW] (E) 1622
450:60-7-2. . . . . [NEW] (E) 1622
450:60-7-3. . . . . [NEW] (E) 1622
450:60-7-4. . . . . [NEW] (E) 1622
450:60-7-5. . . . . [NEW] (E) 1622
450:60-7-6. . . . . [NEW] (E) 1623
450:60-7-7. . . . . [NEW] (E) 1623
450:60-7-8. . . . . [NEW] (E) 1623
450:60-7-9. . . . . [NEW] (E) 1624
450:60-7-10. . . . . [NEW] (E) 1624
450:60-9-1. . . . . [NEW] (E) 1624
450:60-11-1. . . . . [NEW] (E) 1624
450:60-11-2. . . . . [NEW] (E) 1624
450:60-11-3. . . . . [NEW] (E) 1624
450:60-13-1. . . . . [NEW] (E) 1624
450:60-13-2. . . . . [NEW] (E) 1625
450:60-15-1. . . . . [NEW] (E) 1625
450:60-15-2. . . . . [NEW] (E) 1625
450:60-17-1. . . . . [NEW] (E) 1626
450:60-17-2. . . . . [NEW] (E) 1626
450:60-17-3. . . . . [NEW] (E) 1626
450:60-19-1. . . . . [NEW] (E) 1626
450:60-19-2. . . . . [NEW] (E) 1626
450:60-19-3. . . . . [NEW] (E) 1626
450:60-19-4. . . . . [NEW] (E) 1627
450:60-21-1. . . . . [NEW] (E) 1627
450:60-23-1. . . . . [NEW] (E) 1627
450:60-25-1. . . . . [NEW] (E) 1627
450:60-25-2. . . . . [NEW] (E) 1628
450:65-1-1. . . . . [NEW] (E) 1628
450:65-1-2. . . . . [NEW] (E) 1628
450:65-3-1. . . . . [NEW] (E) 1631
450:65-3-2. . . . . [NEW] (E) 1631
450:65-3-3. . . . . [NEW] (E) 1631
450:65-3-4. . . . . [NEW] (E) 1631
450:65-3-5. . . . . [NEW] (E) 1632
450:65-3-6. . . . . [NEW] (E) 1632
450:65-3-7. . . . . [NEW] (E) 1632
450:65-3-8. . . . . [NEW] (E) 1632
450:65-5-1. . . . . [NEW] (E) 1633
450:65-5-2. . . . . [NEW] (E) 1633
450:65-5-3. . . . . [NEW] (E) 1633
450:65-5-4. . . . . [NEW] (E) 1633
450:65-5-5. . . . . [NEW] (E) 1633
450:65-7-1. . . . . [NEW] (E) 1633
450:65-7-2. . . . . [NEW] (E) 1633
450:65-7-3. . . . . [NEW] (E) 1633
485:10-7-2. . . . . [AMENDED] 1454
485:10-9-1. . . . . [AMENDED] 1455
485:10-9-2. . . . . [AMENDED] 1456
485:10-10-8.1. . . . . [NEW] 1458
485:10-15-4. . . . . [AMENDED] 1458
485:10-15-4.1. . . . . [AMENDED] 1458
485:10-15-6. . . . . [AMENDED] 1458
485:10-15-7. . . . . [AMENDED] 1459
485:10-16-1. . . . . [AMENDED] 1460
485:10-16-2. . . . . [AMENDED] 1460
485:10-16-3. . . . . [AMENDED] 1460
485:10-16-4. . . . . [AMENDED] 1461
485:10-16-5. . . . . [AMENDED] 1461
485:10-16-6. . . . . [AMENDED] 1461
485:10-16-7. . . . . [AMENDED] 1462
485:10-16-8. . . . . [AMENDED] 1462
485:10-18-2. . . . . [AMENDED] 1462
490:1-1-1. . . . . [AMENDED] 1463
490:1-1-2. . . . . [AMENDED] 1463
490:1-3-1. . . . . [AMENDED] 1465
490:1-3-2. . . . . [AMENDED] 1465
490:1-3-3. . . . . [AMENDED] 1465

490:1-3-4. . . . . [REVOKED] 1466
490:1-3-6. . . . . [AMENDED] 1466
490:1-5-1. . . . . [REVOKED] 1467
490:1-5-2. . . . . [NEW] 1468
490:1-5-3. . . . . [NEW] 1468
490:1-5-4. . . . . [NEW] 1468
490:1-5-5. . . . . [NEW] 1469
490:1-5-6. . . . . [NEW] 1469
490:1-5-7. . . . . [NEW] 1469
490:1-5-8. . . . . [NEW] 1469
490:1-6-1. . . . . [NEW] 1469
490:1-7-1. . . . . [AMENDED] 1470
490:10-1-1. . . . . [AMENDED] 1471
490:10-1-2. . . . . [REVOKED] 1471
490:10-1-3. . . . . [AMENDED] 1472
490:10-1-4. . . . . [AMENDED] 1472
490:10-1-5. . . . . [REVOKED] 1472
490:10-1-6. . . . . [AMENDED] 1472
490:10-1-8. . . . . [NEW] 1473
490:10-3-1. . . . . [AMENDED] 1473
490:10-5-1. . . . . [AMENDED] 1474
490:10-5-2. . . . . [AMENDED] 1474
490:10-5-3. . . . . [AMENDED] 1474
490:10-5-4. . . . . [AMENDED] 1475
490:10-8-2. . . . . [AMENDED] 1475
490:10-8-4. . . . . [AMENDED] 1475
490:10-8-5. . . . . [AMENDED] 1475
490:10-8-10. . . . . [AMENDED] 1476
490:10-8-16. . . . . [AMENDED] 1476
490:10-8-17. . . . . [AMENDED] 1476
490:10-9-1. . . . . [AMENDED] 1476
490:10-9-2. . . . . [NEW] 1477
490:10-10-1. . . . . [AMENDED] 1477
510:10-7-1. . . . . [AMENDED] 2798
527:10-1-2. . . . . [AMENDED] 1104
530:10-3-22. . . . . [AMENDED] (E) 632
530:10-5-52. . . . . [NEW] (E) 632
530:10-7-19. . . . . [NEW] (E) 635
530:10-7-24. . . . . [AMENDED] (E) 632
530:10-13-35. . . . . [AMENDED] (E) 633
530:10-15-11. . . . . [AMENDED] (E) 633
530:10-17-31. . . . . [AMENDED] (E) 636
530:15-1-1. . . . . [AMENDED] (E) 637
530:15-1-2. . . . . [AMENDED] (E) 637
530:15-1-9. . . . . [AMENDED] (E) 638
530:15-3-8. . . . . [AMENDED] (E) 638
540:10-1-4. . . . . [AMENDED] 1105
540:30-5-1. . . . . [AMENDED] 1106
540:45-1-1. . . . . [NEW] 1107
540:45-1-2. . . . . [NEW] 1107
540:45-1-3. . . . . [NEW] 1107
540:45-1-4. . . . . [NEW] 1107
540:45-1-5. . . . . [NEW] 1107
540:45-1-6. . . . . [NEW] 1108
540:45-1-7. . . . . [NEW] 1108
540:45-1-8. . . . . [NEW] 1108
545:15-1-3. . . . . [AMENDED] 1109
545:20-3-3. . . . . [AMENDED] 1109
550:1-7-2. . . . . [AMENDED] 2799
550:15-1-2. . . . . [AMENDED] 2800
550:20-1-2. . . . . [AMENDED] 2801
560:1-1-2. . . . . [AMENDED] 1964
560:1-1-4. . . . . [AMENDED] 1965
560:1-1-7. . . . . [AMENDED] 1965
560:10-1-13.1. . . . . [NEW] 1966
575:1-1-3. . . . . [AMENDED] 1478
575:1-1-4. . . . . [AMENDED] 1479
575:10-1-5. . . . . [AMENDED] 1481
575:10-1-9. . . . . [AMENDED] 1482
575:10-1-10. . . . . [AMENDED] 1482
580:15-2-2. . . . . [AMENDED] (E) 88
580:15-6-21. . . . . [NEW] (E) 91
580:15-6-22. . . . . [NEW] (E) 91
580:15-6-23. . . . . [NEW] (E) 91
580:15-6-24. . . . . [NEW] (E) 91
585:20-1-1. . . . . [NEW] (E) 2121
585:20-1-2. . . . . [NEW] (E) 2121
585:20-5-1. . . . . [NEW] (E) 2121
585:20-5-2. . . . . [NEW] (E) 2121
585:20-5-3. . . . . [NEW] (E) 2121
585:20-7-1. . . . . [NEW] (E) 2121
585:20-7-2. . . . . [NEW] (E) 2122
585:20-7-3. . . . . [NEW] (E) 2122
590:10-1-4. . . . . [AMENDED] 1483
590:10-1-20. . . . . [NEW] (E) 516
590:10-1-20. . . . . [NEW] 1483
590:10-3-6. . . . . [AMENDED] 1483
590:10-7-16. . . . . [AMENDED] 1484
590:10-19-14. . . . . [AMENDED] 1484
590:15-1-5. . . . . [AMENDED] 1485
590:15-1-6. . . . . [REVOKED] 1486
590:15-3-1. . . . . [NEW] (E) 108
590:15-3-1. . . . . [NEW] 1486
590:15-3-2. . . . . [NEW] (E) 108
590:15-3-2. . . . . [NEW] 1486
590:15-3-3. . . . . [NEW] (E) 108
590:15-3-3. . . . . [NEW] 1486
590:15-3-4. . . . . [NEW] (E) 109
590:15-3-4. . . . . [NEW] 1487
590:15-3-5. . . . . [NEW] (E) 109
590:15-3-5. . . . . [NEW] 1487
590:15-3-6. . . . . [NEW] (E) 109
590:15-3-6. . . . . [NEW] 1487
590:30-1-4. . . . . [AMENDED] 1488
600:10-1-5. . . . . [AMENDED] 1110
600:10-1-7. . . . . [AMENDED] 1110
600:10-1-8. . . . . [AMENDED] 1111
600:10-1-16. . . . . [AMENDED] 1111
600:15-1-6. . . . . [AMENDED] 1113
600:20-1-3. . . . . [AMENDED] 1114
610:25-1-4. . . . . [AMENDED] 1968
610:25-7-6. . . . . [AMENDED] 1970
610:25-23-4. . . . . [AMENDED] 1972
610:25-23-7. . . . . [AMENDED] 1973
610:25-27-4. . . . . [AMENDED] 1115
610:25-27-6. . . . . [AMENDED] 1115
612:1-7-2. . . . . [AMENDED] 1974
612:3-5-12. . . . . [AMENDED] 1975
612:10-1-2. . . . . [AMENDED] 1976
612:10-1-5. . . . . [AMENDED] 1980
612:10-3-4. . . . . [AMENDED] 1982
612:10-3-5. . . . . [AMENDED] 1982
612:10-7-1. . . . . [AMENDED] 1982
612:10-7-4. . . . . [AMENDED] 1984
612:10-7-5. . . . . [AMENDED] 1986
612:10-7-8. . . . . [AMENDED] 1987
612:10-7-87. . . . . [AMENDED] 1988
612:10-7-88. . . . . [AMENDED] 1989
612:10-7-104. . . . . [AMENDED] 1989
612:10-7-117. . . . . [AMENDED] 1989
612:10-7-131. . . . . [AMENDED] 1990
612:10-7-157. . . . . [AMENDED] 1990
612:10-7-162. . . . . [AMENDED] 1990
612:10-7-179. . . . . [AMENDED] 1991

612:10-7-180. . . . . [AMENDED] 1991
612:10-7-185. . . . . [AMENDED] 1991
612:10-7-199. . . . . [AMENDED] 1992
612:10-7-216. . . . . [AMENDED] 1992
612:10-7-221. . . . . [NEW] 1993
612:10-11-4. . . . . [AMENDED] 1993
695:10-1-2. . . . . [AMENDED] 1116
695:10-1-5. . . . . [AMENDED] 1117
695:10-1-6. . . . . [AMENDED] 1117
695:10-1-8. . . . . [AMENDED] 1118
695:10-1-9. . . . . [AMENDED] 1118
695:10-1-10. . . . . [AMENDED] 1118
695:10-1-11. . . . . [AMENDED] 1119
695:10-3-2. . . . . [AMENDED] 1119
695:10-3-3. . . . . [AMENDED] 1119
695:10-3-4. . . . . [AMENDED] 1119
695:10-5-3. . . . . [AMENDED] 1120
695:10-5-4. . . . . [AMENDED] 1120
695:10-5-6. . . . . [AMENDED] (E) 639
695:10-5-6. . . . . [AMENDED] 1120
695:10-7-2. . . . . [AMENDED] 1120
695:10-7-3. . . . . [AMENDED] 1121
695:10-9-2. . . . . [AMENDED] 1121
695:10-11-2. . . . . [AMENDED] 1121
695:10-13-3. . . . . [AMENDED] 1121
710:1-5-86. . . . . [AMENDED] 2802
710:10-4-1. . . . . [AMENDED] 2804
710:10-4-2. . . . . [AMENDED] 2804
710:10-4-3. . . . . [AMENDED] 2804
710:10-4-6. . . . . [AMENDED] 2805
710:10-4-7. . . . . [AMENDED] 2805
710:10-4-8. . . . . [AMENDED] 2805
710:10-4-9. . . . . [AMENDED] 2806
710:10-7-2. . . . . [AMENDED] 2806
710:10-7-2.1. . . . . [AMENDED] 2807
710:10-7-4. . . . . [AMENDED] 2809
710:10-7-5. . . . . [AMENDED] 2809
710:10-7-6. . . . . [AMENDED] 2809
710:10-7-10. . . . . [AMENDED] 2809
710:10-7-11. . . . . [AMENDED] 2810
710:10-7-12. . . . . [AMENDED] 2810
710:10-7-13. . . . . [AMENDED] 2810
710:10-7-14. . . . . [AMENDED] 2810
710:10-7-15. . . . . [AMENDED] 2810
710:10-7-16. . . . . [AMENDED] 2810
710:10-7-17. . . . . [AMENDED] 2811
710:10-7-22. . . . . [AMENDED] 2811
710:10-7-23. . . . . [AMENDED] 2811
710:10-7-24. . . . . [AMENDED] 2811
710:10-7-25. . . . . [AMENDED] 2811
710:10-12-1. . . . . [AMENDED] 2811
710:10-12-4. . . . . [AMENDED] 2811
710:10-12-7. . . . . [AMENDED] 2811
710:10-12-8. . . . . [AMENDED] 2811
710:10-12-9. . . . . [AMENDED] 2812
710:10-12-10. . . . . [AMENDED] 2812
710:10-12-11. . . . . [AMENDED] 2812
710:10-12-13. . . . . [AMENDED] 2812
710:10-12-20. . . . . [AMENDED] 2812
710:10-14-1. . . . . [AMENDED] 2812
710:10-14-3. . . . . [AMENDED] 2813
710:10-14-5. . . . . [AMENDED] 2813
710:10-14-6. . . . . [AMENDED] 2813
710:20-5-6. . . . . [AMENDED] 2813
710:22-1-17. . . . . [AMENDED] 2814
710:25-1-7. . . . . [AMENDED] 2815
710:35-5-64. . . . . [REVOKED] 2815
710:40-1-17. . . . . [NEW] 2816
710:45-9-27. . . . . [AMENDED] 2817
710:45-9-28. . . . . [AMENDED] 2817
710:45-9-32. . . . . [AMENDED] 2818
710:45-9-42. . . . . [AMENDED] 2818
710:45-9-43. . . . . [AMENDED] 2818
710:45-9-52. . . . . [AMENDED] 2819
710:45-9-53. . . . . [AMENDED] 2819
710:45-9-60. . . . . [AMENDED] 2820
710:45-9-62. . . . . [AMENDED] 2820
710:45-9-62.1. . . . . [AMENDED] 2821
710:45-9-64. . . . . [NEW] 2821
710:45-9-72. . . . . [AMENDED] 2822
710:45-9-73. . . . . [AMENDED] 2822
710:45-9-80. . . . . [AMENDED] 2822
710:45-9-81. . . . . [AMENDED] 2822
710:45-9-82. . . . . [AMENDED] 2823
710:45-9-83. . . . . [AMENDED] 2823
710:45-9-84. . . . . [AMENDED] 2823
710:45-9-92. . . . . [AMENDED] 2823
710:50-15-33. . . . . [NEW] 2825
710:50-15-48. . . . . [AMENDED] 2825
710:50-15-49. . . . . [AMENDED] 2825
710:50-15-50. . . . . [AMENDED] 2826
710:50-15-66. . . . . [AMENDED] 2827
710:50-15-76. . . . . [AMENDED] 2827
710:50-15-85. . . . . [AMENDED] 2828
710:50-15-90. . . . . [AMENDED] 2828
710:50-15-92. . . . . [AMENDED] 2828
710:50-15-97. . . . . [NEW] 2829
710:50-15-98. . . . . [NEW] 2829
710:50-15-99. . . . . [NEW] 2830
710:50-15-100. . . . . [NEW] 2830
710:50-15-101. . . . . [NEW] 2832
710:50-15-103. . . . . [NEW] 2833
710:50-15-104. . . . . [NEW] 2833
710:50-15-105. . . . . [NEW] 2834
710:50-15-106. . . . . [NEW] 2834
710:50-15-107. . . . . [NEW] 2835
710:50-17-3. . . . . [AMENDED] 2836
710:55-4-103. . . . . [AMENDED] 2836
710:60-3-30. . . . . [AMENDED] 2838
710:60-3-32. . . . . [AMENDED] 2838
710:60-3-112. . . . . [AMENDED] 2838
710:60-3-140. . . . . [NEW] 2839
710:60-3-141. . . . . [NEW] 2839
710:60-3-142. . . . . [NEW] 2839
710:60-3-150. . . . . [AMENDED] 2840
710:60-3-210. . . . . [REVOKED] 2840
710:60-3-211. . . . . [REVOKED] 2840
710:60-3-212. . . . . [REVOKED] 2841
710:60-3-213. . . . . [REVOKED] 2841
710:60-5-53. . . . . [AMENDED] 2841
710:60-5-71. . . . . [AMENDED] 2841
710:60-5-91. . . . . [AMENDED] 2842
710:60-5-92. . . . . [AMENDED] 2843
710:60-5-96. . . . . [AMENDED] 2843
710:60-5-116. . . . . [AMENDED] 2844
710:60-7-3. . . . . [AMENDED] 2845
710:60-8-4. . . . . [AMENDED] 2846
710:60-9-95. . . . . [AMENDED] 2847
710:65-3-4. . . . . [AMENDED] 2849
710:65-3-8. . . . . [AMENDED] 2850
710:65-7-15. . . . . [AMENDED] 2850
710:65-7-17. . . . . [NEW] 2851
710:65-7-18. . . . . [NEW] 2851
710:65-9-8. . . . . [AMENDED] 2851

710:65-13-1. . . . . [AMENDED] 2852
710:65-13-63. . . . . [NEW] 2853
710:65-13-123. . . . . [NEW] 2853
710:65-13-154. . . . . [AMENDED] 2853
710:65-13-156. . . . . [NEW] 2853
710:65-13-176. . . . . [NEW] 2855
710:65-13-194. . . . . [AMENDED] 2856
710:65-13-275. . . . . [NEW] 2858
710:65-13-339. . . . . [AMENDED] 2858
710:65-13-343. . . . . [AMENDED] 2859
710:65-13-344. . . . . [NEW] 2859
710:65-13-345. . . . . [NEW] 2859
710:65-13-346. . . . . [NEW] 2860
710:65-13-347. . . . . [NEW] 2860
710:65-13-348. . . . . [NEW] 2861
710:65-13-450. . . . . [NEW] 2861
710:65-19-74. . . . . [AMENDED] 2862
710:65-19-77. . . . . [AMENDED] 2862
710:65-19-142. . . . . [AMENDED] 2862
710:65-19-195. . . . . [NEW] 2863
710:65-19-328. . . . . [AMENDED] 2863
710:65-19-330. . . . . [AMENDED] 2863
710:65-21-7. . . . . [AMENDED] 2865
710:70-2-9.1. . . . . [NEW] 2868
710:70-2-11. . . . . [NEW] 2868
710:70-2-12. . . . . [NEW] (E) 639
710:70-2-12. . . . . [NEW] 2868
710:70-2-13. . . . . [NEW] (E) 1196
710:70-2-13. . . . . [NEW] 2866
710:70-5-13. . . . . [NEW] 2869
710:85-7-3. . . . . [AMENDED] 2870
710:90-3-4. . . . . [AMENDED] 2871
710:90-3-11. . . . . [AMENDED] 2872
710:90-3-15. . . . . [AMENDED] 2873
710:90-3-17. . . . . [AMENDED] 2874
710:95-5-2. . . . . [AMENDED] 2874
710:95-5-13. . . . . [AMENDED] 2875
710:95-5-14. . . . . [AMENDED] 2875
710:95-5-20. . . . . [AMENDED] 2876
710:95-5-21. . . . . [AMENDED] 2877
710:95-5-22. . . . . [NEW] 2877
710:95-13-1. . . . . [REVOKED] 2879
715:10-1-7. . . . . [AMENDED] (E) 641
725:1-1-1. . . . . [AMENDED] 1994
725:1-3-1. . . . . [AMENDED] 1994
725:1-3-2. . . . . [AMENDED] 1994
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725:20-7-10. . . . . [NEW] (E) 38
725:20-9-5. . . . . [AMENDED] 2002
725:20-9-6. . . . . [AMENDED] 2002
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725:20-13-1. . . . . [AMENDED] 2002
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725:25-29-2. . . . . [REVOKED] 2012
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725:30-2-5. . . . . [AMENDED] 2013
725:30-4-1. . . . . [AMENDED] 2013
725:30-4-2. . . . . [AMENDED] 2014
725:30-4-9. . . . . [REVOKED] 2014
725:30-6-1. . . . . [AMENDED] 2014
725:30-8-6. . . . . [AMENDED] 2015
725:30-10-1. . . . . [AMENDED] 2015
725:30-10-2. . . . . [AMENDED] 2015

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725:30-12-5. . . . . [AMENDED] 2016
725:30-12-6. . . . . [AMENDED] 2018
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725:30-23-3. . . . . [AMENDED] 2018
725:30-24-1. . . . . [AMENDED] 2018
725:30-26-12. . . . . [AMENDED] 2019
725:30-28-1. . . . . [AMENDED] 2019
725:30-28-2. . . . . [AMENDED] 2019
725:30-29-1. . . . . [NEW] 2019
725:30-29-2. . . . . [NEW] 2019
725:30-29-3. . . . . [NEW] 2020
725:30-29-4. . . . . [NEW] 2020
725:30-29-5. . . . . [NEW] 2020
725:30-29-6. . . . . [NEW] 2020
725:30-29-7. . . . . [NEW] 2020
725:30-29-8. . . . . [NEW] 2020
725:30-29-9. . . . . [NEW] 2021
725:30-29-10. . . . . [NEW] 2021
725:30-29-11. . . . . [NEW] 2021
725:30-29-12. . . . . [NEW] 2021
725:30-29-13. . . . . [NEW] 2021
725:30-29-14. . . . . [NEW] 2021
725:30-29-15. . . . . [NEW] 2021
725:35-1-1. . . . . [AMENDED] 2022
725:35-1-2. . . . . [AMENDED] 2022
725:35-1-3. . . . . [AMENDED] 2022
725:35-1-5. . . . . [AMENDED] 2023
730:40-5-1. . . . . [NEW] (E) 429
730:40-5-1. . . . . [NEW] 2880
730:40-5-2. . . . . [NEW] (E) 429
730:40-5-2. . . . . [NEW] 2880
730:40-5-3. . . . . [NEW] (E) 430
730:40-5-3. . . . . [NEW] 2880
730:40-5-4. . . . . [NEW] (E) 430
730:40-5-4. . . . . [NEW] 2881
765:1-1-2.1. . . . . [AMENDED] 2881
765:2-3-5.1. . . . . [NEW] 2882
765:2-3-6. . . . . [AMENDED] 2882
765:2-3-11. . . . . [AMENDED] 2882
765:2-5-12. . . . . [AMENDED] 2883
765:3-1-6. . . . . [AMENDED] 2883
765:10-1-3. . . . . [AMENDED] 2884
765:10-3-1. . . . . [AMENDED] 2885
765:10-3-3. . . . . [AMENDED] 2886
765:10-3-4. . . . . [NEW] 2886
765:10-3-5. . . . . [NEW] 2886
765:10-5-1. . . . . [AMENDED] 2886
765:11-3-1. . . . . [AMENDED] 2887
765:11-5-1. . . . . [AMENDED] 2887
765:15-1-1. . . . . [AMENDED] 2888
765:15-1-2. . . . . [AMENDED] 2888
765:15-1-3. . . . . [AMENDED] 2888
765:15-1-4. . . . . [AMENDED] 2888
765:15-1-5. . . . . [AMENDED] 2888
765:15-1-7. . . . . [AMENDED] 2889
765:15-3-1. . . . . [AMENDED] 2889
765:15-5-1. . . . . [AMENDED] 2889
765:16-1-2. . . . . [AMENDED] 2890
765:16-3-7. . . . . [AMENDED] 2891
765:16-3-11. . . . . [AMENDED] 2891
765:16-3-12. . . . . [NEW] 2891
765:20-1-1. . . . . [AMENDED] 2892
765:20-1-2. . . . . [AMENDED] 2892
765:20-1-4. . . . . [AMENDED] 2892
765:20-1-6. . . . . [AMENDED] 2893
765:20-3-2. . . . . [AMENDED] 2893
765:20-5-1. . . . . [NEW] 2893
765:25-1-3. . . . . [AMENDED] 2894
765:25-1-4. . . . . [AMENDED] 2894
765:25-1-5. . . . . [AMENDED] 2894
765:25-1-6. . . . . [AMENDED] 2894
765:25-3-1. . . . . [AMENDED] 2895
765:25-3-4. . . . . [AMENDED] 2895
765:25-5-1. . . . . [AMENDED] 2895
765:25-5-2. . . . . [AMENDED] 2895
765:30-3-1. . . . . [AMENDED] 2896
765:30-3-2. . . . . [AMENDED] 2896
765:30-7-2. . . . . [AMENDED] 2896
765:35-5-1. . . . . [AMENDED] 2897
765:35-7-1. . . . . [AMENDED] 2897
765:36-7-1. . . . . [AMENDED] 2898
765:37-9-1. . . . . [NEW] 2899
765:37-9-2. . . . . [NEW] 2899
765:38-1-1. . . . . [NEW] 2899
765:38-1-2. . . . . [NEW] 2899
765:38-1-3. . . . . [NEW] 2900
765:38-1-4. . . . . [NEW] 2900
765:38-1-5. . . . . [NEW] 2900
765:38-1-6. . . . . [NEW] 2900
765:38-3-1. . . . . [NEW] 2900
765:38-5-1. . . . . [NEW] 2900
765:38-5-2. . . . . [NEW] 2901
775:10-3-12. . . . . [AMENDED] 2024
775:10-5-30. . . . . [AMENDED] 2025
775:10-7-9.1. . . . . [NEW] 2026
775:10-10-10. . . . . [NEW] 2027
775:25-1-3. . . . . [AMENDED] 2027
775:26-1-1. . . . . [NEW] 2028
780:10-3-2. . . . . [AMENDED] 2901
780:10-5-2. . . . . [AMENDED] 2902
780:10-5-4. . . . . [AMENDED] 2902
780:10-9-1. . . . . [AMENDED] 2903
780:10-9-2. . . . . [AMENDED] 2903
780:15-3-2. . . . . [AMENDED] 2904
780:15-3-3. . . . . [AMENDED] 2908
780:15-3-6. . . . . [AMENDED] 2909
780:20-3-1. . . . . [AMENDED] 2911
780:20-3-2. . . . . [AMENDED] 2914
780:20-3-3. . . . . [AMENDED] 2919
780:20-3-4. . . . . [AMENDED] 2920
780:20-3-5. . . . . [AMENDED] 2920
785:45-1-2. . . . . [AMENDED] 1490
785:45-5-10. . . . . [AMENDED] 1493
785:45-5-12. . . . . [AMENDED] 1494
785:45-5-13. . . . . [AMENDED] 1497
785:45-5-20. . . . . [AMENDED] 1497
785:45-5-29. . . . . [NEW] 1498
785:45, App. A. . . . . [REVOKED] 1500
785:45, App. A. . . . . [NEW] 1500
785:45, App. C. . . . . [REVOKED] 1549
785:45, App. E. . . . . [REVOKED] 1550
785:45, App. E. . . . . [NEW] 1550
785:45, App. F. . . . . [REVOKED] 1557
785:45, App. F. . . . . [NEW] 1557
785:45, App. H. . . . . [NEW] 1565
785:46-1-2. . . . . [AMENDED] 1568
785:46-1-6. . . . . [AMENDED] 1570
785:46-9-5. . . . . [AMENDED] 1571
785:46-15-3. . . . . [AMENDED] 1571
785:46-19-2. . . . . [AMENDED] 1573
785:46-19-3. . . . . [AMENDED] 1573
800:1-15-2. . . . . [AMENDED] 1574
800:1-15-3. . . . . [AMENDED] 1574

800:1-15-4. . . . . [AMENDED] 1575
800:10-1-4. . . . . [AMENDED] 1576
800:10-1-5. . . . . [AMENDED] 1577
800:10-5-3. . . . . [AMENDED] 1578
800:15-5-2. . . . . [AMENDED] 1580
800:15-7-3. . . . . [AMENDED] (E) 709
800:15-7-3. . . . . [AMENDED] 1580
800:20-3-2. . . . . [AMENDED] 1582
800:25-3-1. . . . . [AMENDED] 1583
800:25-7-3. . . . . [AMENDED] 1584
800:25-7-17. . . . . [AMENDED] 1584
800:25-7-17.1. . . . . [NEW] 1584
800:25-7-55. . . . . [AMENDED] 1585
800:25-7-60. . . . . [AMENDED] 1585
800:25-7-61. . . . . [AMENDED] 1585
800:25-7-62. . . . . [AMENDED] 1585
800:25-7-63. . . . . [AMENDED] 1585
800:25-7-64. . . . . [AMENDED] 1585
800:25-7-86.1. . . . . [AMENDED] 1586
800:25-7-87. . . . . [REVOKED] 1586
800:25-7-90. . . . . [AMENDED] 1587
800:25-7-98. . . . . [AMENDED] 1587
800:25-7-105.6. . . . . [AMENDED] 1587
800:25-7-131.2. . . . . [AMENDED] 1588
800:25-7-133.2. . . . . [NEW] (E) 1634
800:25-7-133.3. . . . . [NEW] (E) 1634
800:25-9-3. . . . . [AMENDED] 1588
800:25-9-10. . . . . [REVOKED] 1589
800:25-9-11. . . . . [AMENDED] 1589
800:25-9-12. . . . . [AMENDED] 1589
800:25-13-6. . . . . [AMENDED] (E) 565
800:25-13-6. . . . . [AMENDED] 1589
800:25-13-9. . . . . [AMENDED] (E) 566
800:25-13-9. . . . . [AMENDED] 1590
800:25-23-2. . . . . [AMENDED] 1590
800:25-26-3. . . . . [AMENDED] 1591
800:30-1-5. . . . . [AMENDED] (E) 662
800:30-1-5. . . . . [AMENDED] 1592
800:30-3-1. . . . . [AMENDED] 1593
800:30-3-2. . . . . [AMENDED] 1593
800:30-3-3. . . . . [AMENDED] 1593
800:30-3-4. . . . . [AMENDED] 1593
800:30-3-5. . . . . [AMENDED] 1594
800:30-3-6. . . . . [AMENDED] 1594
800:30-3-7. . . . . [AMENDED] 1594
800:30-3-8. . . . . [AMENDED] 1596

Agency/Title Index

[Assigned as of 6-15-06]

Agency	Title
Oklahoma **ACCOUNTANCY** Board	10
State **ACCREDITING** Agency	15
AD Valorem Task Force *(abolished 7-1-93)*	20
Oklahoma **AERONAUTICS** Commission	25
Board of Regents for the Oklahoma **AGRICULTURAL** and Mechanical Colleges	30
Oklahoma Department of **AGRICULTURE**, Food, and Forestry	35
Oklahoma Board of Licensed **ALCOHOL** and Drug Counselors	38
Board of Tests for **ALCOHOL** and Drug Influence	40
ALCOHOLIC Beverage Laws Enforcement Commission	45
ANATOMICAL Board of the State of Oklahoma	50
Board of Governors of the Licensed **ARCHITECTS** and Landscape Architects of Oklahoma	55
ARCHIVES and Records Commission	60
Board of Trustees for the **ARDMORE** Higher Education Program	65
Oklahoma **ARTS** Council	70
ATTORNEY General	75
State **AUDITOR** and Inspector	80
State **BANKING** Department	85
Oklahoma State Employees **BENEFITS** Council	87
Council of **BOND** Oversight	90
Oklahoma Professional **BOXING** Commission	92
State **BURIAL** Board *(abolished 7-1-92)*	95
[RESERVED]	100
Oklahoma **CAPITOL** Investment Board	105
Oklahoma **CAPITOL** Improvement Authority	110
State **CAPITOL** Preservation Commission	115
CAPITOL-MEDICAL Center Improvement and Zoning Commission	120
Oklahoma Department of **CAREER** and Technology Education (*Formerly:* Oklahoma Department of **VOCATIONAL** and Technical Education) - See Title 780	
Board of Regents of **CARL** Albert State College	125
Department of **CENTRAL** Services (*Formerly:* Office of **PUBLIC** Affairs) - *See* Title 580	
CEREBRAL Palsy Commission	130
Commission on **CHILDREN** and Youth	135
Board of **CHIROPRACTIC** Examiners	140
Oklahoma Department of **EMERGENCY** Management (*Formerly:* Department of **CIVIL** Emergency Management)	145
Oklahoma Department of **COMMERCE**	150
COMMUNITY Hospitals Authority	152
COMPSOURCE Oklahoma (*Formerly:* State **INSURANCE** Fund) - *See* Title 370	
Oklahoma **CONSERVATION** Commission	155
CONSTRUCTION Industries Board	158
Department of **CONSUMER** Credit	160
CORPORATION Commission	165
Department of **CORRECTIONS**	170
State Board of **COSMETOLOGY**	175
Oklahoma State **CREDIT** Union Board	180
CRIME Victims Compensation Board	185
Joint **CRIMINAL** Justice System Task Force Committee	190
Board of **DENTISTRY**	195
Oklahoma **DEVELOPMENT** Finance Authority	200
Board of Regents of **EASTERN** Oklahoma State College	205
State Department of **EDUCATION**	210
EDUCATION Oversight Board	215
Oklahoma **EDUCATIONAL** Television Authority	220
[RESERVED]	225
State **ELECTION** Board	230
Oklahoma **FUNERAL** Board (*Formerly:* Oklahoma State Board of **EMBALMERS** and Funeral Directors)	235
Oklahoma Department of **EMERGENCY** Management (*Formerly:* Department of **CIVIL** Emergency Management) - *See* Title 145	
Oklahoma **EMPLOYMENT** Security Commission	240
Oklahoma **ENERGY** Resources Board	243
State Board of Licensure for Professional **ENGINEERS** and Land Surveyors (***Formerly:*** State Board of Registration for Professional Engineers and Land Surveyors)	245
Board of Trustees for the **ENID** Higher Education Program	250
Department of **ENVIRONMENTAL** Quality	252
State Board of **EQUALIZATION**	255
ETHICS Commission *(Title revoked)*	257
ETHICS Commission	258
Office of State **FINANCE**	260
State **FIRE** Marshal Commission	265
Oklahoma Council on **FIREFIGHTER** Training	268
Oklahoma **FIREFIGHTERS** Pension and Retirement System	270
[RESERVED]	275
State Board of Registration for **FORESTERS**	280
FOSTER Care Review Advisory Board	285
Oklahoma **FUNERAL** Board (*Formerly:* Oklahoma State Board of Embalmers and Funeral Directors) - *See* Title 235	
Oklahoma **FUTURES**	290
GOVERNOR	295
GRAND River Dam Authority	300
Group Self-Insurance Association **GUARANTY** Fund Board	302
Individual Self-Insured **GUARANTY** Fund Board	303
STATE Use Committee (*Formerly:* Committee on Purchases of Products and Services of the Severely **HANDICAPPED**)	304
Office of **HANDICAPPED** Concerns	305
Oklahoma State Department of **HEALTH**	310
Oklahoma Basic **HEALTH** Benefits Board *(abolished 11-1-97)*	315
Oklahoma **HEALTH** Care Authority	317
HIGHWAY Construction Materials Technician Certification Board	318
Oklahoma **HISTORICAL** Society	320
Oklahoma **HORSE** Racing Commission	325
Oklahoma **HOUSING** Finance Agency	330
Oklahoma **HUMAN** Rights Commission	335
Department of **HUMAN** Services	340
Committee for **INCENTIVE** Awards for State Employees	345
Oklahoma **INDIAN** Affairs Commission	350
Oklahoma **INDIGENT** Defense System	352
Oklahoma **INDUSTRIAL** Finance Authority	355
INJURY Review Board	357

Agency	Title
Oklahoma State and Education Employees Group **INSURANCE** Board	360
INSURANCE Department	365
COMPSOURCE Oklahoma (*Formerly:* State **INSURANCE** Fund)	370
Oklahoma State Bureau of **INVESTIGATION**	375
Council on **JUDICIAL** Complaints	376
Office of **JUVENILE** Affairs	377
Department of **LABOR**	380
Department of the Commissioners of the **LAND** Office	385
Council on **LAW** Enforcement Education and Training	390
Oklahoma **LAW** Enforcement Retirement System	395
Board on **LEGISLATIVE** Compensation	400
Oklahoma Department of **LIBRARIES**	405
LIEUTENANT Governor	410
Oklahoma **LINKED** Deposit Review Board	415
Oklahoma **LIQUEFIED** Petroleum Gas Board	420
Oklahoma **LIQUEFIED** Petroleum Gas Research, Marketing and Safety Commission	422
LITERACY Initiatives Commission	425
LONG-RANGE Capital Planning Commission	428
LOTTERY Commission, Oklahoma	429
Board of Trustees for the **MCCURTAIN** County Higher Education Program	430
Commission on **MARGINALLY** Producing Oil and Gas Wells	432
State Board of **MEDICAL** Licensure and Supervision	435
MEDICAL Technology and Research Authority of Oklahoma	440
Board of **MEDICOLEGAL** Investigations	445
Department of **MENTAL** Health and Substance Abuse Services	450
MERIT Protection Commission	455
MILITARY Planning Commission, Oklahoma Strategic	457
Department of **MINES**	460
Oklahoma **MOTOR** Vehicle Commission	465
Board of Regents of **MURRAY** State College	470
Oklahoma State Bureau of **NARCOTICS** and Dangerous Drugs Control	475
Board of Regents of **NORTHERN** Oklahoma College	480
Oklahoma Board of **NURSING**	485
Oklahoma State Board of Examiners for **NURSING** Home Administrators	490
Board of Regents of **OKLAHOMA** City Community College	495
Board of Regents of **OKLAHOMA** Colleges	500
Board of Examiners in **OPTOMETRY**	505
State Board of **OSTEOPATHIC** Examiners	510
PARDON and Parole Board	515
Oklahoma **PEANUT** Commission	520
Oklahoma State **PENSION** Commission	525
State Board of Examiners of **PERFUSIONISTS**	527
Office of **PERSONNEL** Management	530
Oklahoma State Board of **PHARMACY**	535
PHYSICIAN Manpower Training Commission	540
Board of **PODIATRIC** Medical Examiners	545
Oklahoma **POLICE** Pension and Retirement System	550
State Department of **POLLUTION** Control *(abolished 1-1-93)*	555
POLYGRAPH Examiners Board	560
Oklahoma Board of **PRIVATE** Vocational Schools	565
State Board for **PROPERTY** and Casualty Rates	570
State Board of Examiners of **PSYCHOLOGISTS**	575
Department of **CENTRAL** Services (*Formerly*: Office of **PUBLIC** Affairs)	580
PUBLIC Employees Relations Board	585
Oklahoma **PUBLIC** Employees Retirement System	590
Department of **PUBLIC** Safety	595
REAL Estate Appraiser Board	600
Oklahoma **REAL** Estate Commission	605
Board of Regents of **REDLANDS** Community College	607
State **REGENTS** for Higher Education	610
State Department of **REHABILITATION** Services	612
Board of Regents of **ROGERS** State College	615
Board of Regents of **ROSE** State College	620
Oklahoma **SAVINGS** and Loan Board *(abolished 7-1-93)*	625
SCENIC Rivers Commission	630
Oklahoma Commission on **SCHOOL** and County Funds Management	635
Advisory Task Force on the Sale of **SCHOOL** Lands *(functions concluded 2-92)*	640
The Oklahoma School of **SCIENCE** and Mathematics	645
Oklahoma Center for the Advancement of **SCIENCE** and Technology	650
SECRETARY of State	655
Department of **SECURITIES**	660
Board of Regents of **SEMINOLE** State College	665
SHEEP and Wool Commission	670
State Board of Licensed **SOCIAL** Workers	675
SOUTHERN Growth Policies Board	680
Oklahoma **SOYBEAN** Commission *(abolished 7-1-97)*	685
Board of Examiners for **SPEECH–LANGUAGE** Pathology and Audiology	690
STATE Agency Review Committee	695
STATE Use Committee (*Formerly:* Committee on Purchases of Products and Services of the Severely **HANDICAPPED**) – *See* Title 304	
Oklahoma **STUDENT** Loan Authority	700
TASK Force 2000	705
Oklahoma **TAX** Commission	710
Oklahoma Commission for **TEACHER** Preparation	712
TEACHERS' Retirement System	715
State **TEXTBOOK** Committee	720
Oklahoma **TOURISM** and Recreation Department	725
Department of **TRANSPORTATION**	730
Oklahoma **TRANSPORTATION** Authority	731
State **TREASURER**	735
Board of Regents of **TULSA** Community College	740
Oklahoma **TURNPIKE** Authority *(name changed - see Title 731)*	745
Board of Trustees for the **UNIVERSITY** Center at Tulsa	750
UNIVERSITY Hospitals Authority	752
UNIVERSITY Hospitals Trust	753
Board of Regents of the **UNIVERSITY** of Oklahoma	755
Board of Regents of the **UNIVERSITY** of Science and Arts of Oklahoma	760
Oklahoma **USED** Motor Vehicle and Parts Commission	765
Oklahoma Department of **VETERANS** Affairs	770
Board of **VETERINARY** Medical Examiners	775
Oklahoma Department of **CAREER** and Technology Education (*Formerly:* Oklahoma Department of **VOCATIONAL** and Technical Education)	780
Oklahoma **WATER** Resources Board	785
Board of Regents of **WESTERN** Oklahoma State College	790
Oklahoma **WHEAT** Commission	795
Department of **WILDLIFE** Conservation	800
WILL Rogers and J.M. Davis Memorials Commission	805

Notices of Rulemaking Intent

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

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

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

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

[OAR Docket #06-1090]

INTENDED RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 1. General Provisions
252:100-1-3. [AMENDED]
Subchapter 2. Incorporation By Reference [NEW]
Subchapter 4. New Source Performance Standards
252:100-4-1. [REVOKED]
252:100-4-2. [REVOKED]
252:100-4-3. [REVOKED]
252:100-4-4. [REVOKED]
252:100-4-5. [REVOKED]
Subchapter 5. Registration, Emission Inventory and Annual Operating Fees
252:100-5-1.1. [AMENDED]
252:100-5-2.1. [AMENDED]
Subchapter 7. Permits for Minor Facilities
Part 1. General Provisions
252:100-7-1.1. [AMENDED]
Subchapter 8. Permits for Part 70 Sources
Part 1. General Provisions
252:100-8-1.1. [AMENDED]
Subchapter 9. Excess Emission Reporting Requirements
252:100-9-2. [AMENDED]
Subchapter 17. Incinerators
Part 11. Other Solid Waste Incineration Units [NEW]
Subchapter 23. Control of Emissions From Cotton Gins
252:100-23-2. [AMENDED]
Subchapter 37. Control of Emission of Volatile Organic Compounds (VOCs)
Part 1. General Provisions
252:100-37-2. [AMENDED]
Subchapter 39. Emission of Volatile Organic Compounds (VOCs) in Nonattainment Areas and Former Nonattainment Areas
Part 1. General Provisions
252:100-39-2. [AMENDED]
Subchapter 40. Control of Emission of Friable Asbestos During Demolition and Renovation Operations [NEW]
Subchapter 41. Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants
Part 1. General Provisions
252:100-41-1. [REVOKED]
252:100-41-1.1. [REVOKED]
252:100-41-2. [REVOKED]
Part 3. Hazardous Air Pollutants
252:100-41-13. [REVOKED]
252:100-41-14. [REVOKED]
252:100-41-15. [REVOKED]
252:100-41-16. [REVOKED]
Part 5. Toxic Air Contaminants
252:100-41-35. [REVOKED]
252:100-41-36. [REVOKED]
252:100-41-37. [REVOKED]
252:100-41-38. [REVOKED]
252:100-41-39. [REVOKED]
252:100-41-40. [REVOKED]
252:100-41-41. [REVOKED]
252:100-41-42. [REVOKED]
252:100-41-43. [REVOKED]
252:100-41-44. [REVOKED]
Subchapter 44. Control of Mercury Emissions from Coal-Fired Electric Steam Generating Units [NEW]
Appendix H. De Minimis Facilities [REVOKED]
Appendix H. De Minimis Facilities [NEW]
Appendix I. Insignificant Activities (Registration) List [REVOKED]
Appendix I. Insignificant Activities List [NEW]
Appendix J. Trivial Activities (De Minimis) List [REVOKED]
Appendix J. Trivial Activities List [NEW]
Appendix P. Regulated Air Pollutants [NEW]
Appendix Q. Title 40, Code of Federal Regulations, Incorporation by Reference [NEW]

SUMMARY:

The Department is proposing to amend Oklahoma Administrative Code (OAC) Title 252 Chapter 100-1-3, OAC 252:100-8-1.1, OAC 252:100-37-2, and OAC 252:100-39-2 to clarify definitions including particulate matter and volatile organic compounds.

The Department proposes to add to Title 252 Chapter 100, a new Subchapter 2, Incorporation by Reference, a new Subchapter 40, Control of Emission of Friable Asbestos During Demolition and Renovation Operations, and a new Appendix Q, Title 40, Code of Federal Regulations, Incorporation by Reference. Staff proposes revoking Subchapter 4, New Source Performance Standards, and Subchapter 41, Control of Emission of Hazardous Air Pollutants and Toxic Air Contaminants. This proposal would

assure that all incorporations by reference to 40 CFR have effective dates.

The Department proposes to amend OAC 252:100-5-1.1, 7-1.1 and 9-2 to add a new definition for "regulated air pollutant." A new Appendix P, Regulated Air Pollutants, is being proposed as part of these amendments. Amendments to the terms "Actual emissions", "Allowable emissions" and "Regulated pollutant (for fee calculation)" are proposed in OAC 252:100-5-1.1. The addition of a new definition is proposed in Section 5-1.1 for "Gross particulate matter"(GPM) which would replace the term "TSP" in that section. The term "TSP" is proposed to be deleted in OAC 252:100-23-2. The term "Actual emissions" is also proposed to be amended in OAC 252:100-7-1.1.

The Department is proposing changes to OAC 252:100-5, Registration, Emission Inventory and Annual Operating Fees. In OAC 252:100-5.2.1(b)(3) staff proposes to change the requirement to provide written explanation when yearly emission changes are in excess of 30 percent. The written explanation would be required only if the Department requests that documentation. The authority to request this information is in the next paragraph, 252:100-5.2.1(c) Documentation. The other proposed change would set the due date for submittal of the annual emission inventory to April 1st each year, removing the necessity of applying for a 30-day extension.

The Department proposes the addition of 100-17, Part 11, Other Solid Waste Incinerators (OSWI), to establish state emission standards and other enforceable requirements for existing OSWI. An OSWI is considered an existing OSWI if construction commenced on or before Dec. 9, 2004. These proposed rules would provide the means for implementing and enforcing the federal emission guidelines (40 CFR 60, Subpart FFFF). The new Part 11 incorporates by reference sections of the New Source Performance Standards (NSPS) for OSWI (40 CFR 60, Subpart EEEE). In addition to establishing emission standards for certain regulated pollutants, the proposed rule would establish requirements for OSWI operator training and qualifications, waste management plans, testing and monitoring of pollutants, and operating parameters.

The Department is proposing a new Subchapter 44, Control of Mercury Emissions from Coal Fired Electric Steam Generating Units. The Department is proposing to incorporate by reference the federal Clean Air Mercury Rule (CAMR) issued in March 2005 with some variation of allocations and set-asides. The Department seeks public comments concerning the most appropriate method of allocating, distributing, and setting aside the Mercury credits.

The Department proposes to amend the De Minimis Facilities List in Appendix H, the Insignificant Activities (Registration) List in Appendix I, and the Trivial Activities (de Minimis) List in Appendix J of OAC 252:100. These amendments consist of reformatting all three lists, updating the facilities included on the De Minimis Facilities List, and updating the activities on the Insignificant Activities (Registration) List and the Trivial Activities (De Minimis) List. It was anticipated when these lists were first compiled and made part of Chapter 100 that the Department would revisit them and make appropriate changes based on the staff's experience in using them. The Department proposes to delete some activities or facilities from the lists based on more accurate emissions factors and modify some activities or facilities that are currently on the lists. The Department is also considering the possibility of combining Appendices H and J.

AUTHORITY:

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

COMMENT PERIOD:

Written comments on the proposed rulemakings will be accepted prior to and at the hearing on July 19, 2006. For comments received at least 5 business days prior to the Council meeting, staff will post written responses on the Department's web page at least 1 day prior to the Council meeting and provide hard copy written responses to these comments to the Council and the public at that Council meeting. Oral comments may be made at the July 19, 2006 hearing and at the August 22, 2006 Environmental Quality Board meeting.

PUBLIC HEARINGS:

Before the Air Quality Advisory Council at 9:00 a.m. on Wednesday, July 19, 2006, at the DEQ, 707 N. Robinson, Oklahoma City.

Before the Environmental Quality Board on August 22, 2006 at the Kruse Auditorium, 2510 Sam Noble Parkway, Ardmore, OK.

This hearing shall also serve as the public hearing to receive comments on the proposed revisions to the SIP under the requirements of 40 CFR § 51.102 of the EPA regulations concerning the SIPs and 27A O.S. § 2-5-107(6)(c).

REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:

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

COPIES OF PROPOSED RULES:

The proposed rules are available for review 30 days prior to the hearing at the Air Quality Division of the Department and on the Department's website (www.deq.state.ok.us), Air Quality Division, Council Meetings, or copies may be obtained from the contact person by calling (405) 702-4100.

RULE IMPACT STATEMENT:

Copies of the Rule Impact Statement may be obtained from the contact person.

CONTACT PERSON:

Please send written comments to Max Price at max.price@deq.state.ok.us for Subchapters 1, 8, 37 and 39; for Subchapters 5 (5-1.1), 7, 9 and 23, and Appendix P; and for Subchapters 2, 4, 40 and 41, and Appendix Q. Written

comments for the new Part 11 of Subchapter 17 should be sent to Heather Bragg at heather.bragg@deq.state.ok.us. For Subchapter 5 (5-2.1) and the new Subchapter 44, please send written comments to Morris Moffett at morris.moffett@deq.state.ok.us. For Appendices H, I and J, please send written comments to Dr. Joyce Sheedy at joyce.sheedy@deq.state.ok.us. The mailing address is Department of Environmental Quality, Air Quality Division, P.O. Box 1677, Oklahoma City, Oklahoma 73101-1677, FAX (405)702-4101.

PERSONS WITH DISABILITIES:

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

[OAR Docket #06-1090; filed 5-25-06]

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 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 10. DRIVER LICENSES AND IDENTIFICATION CARDS

[OAR Docket #06-981]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review.

RULES:

Subchapter 1. Procedures for Obtaining and Maintaining a Driver License or Identification Card

Part 2. Application for Initial Driver License

595:10-1-3. Procedures for obtaining an initial driver license [AMENDED]

595:10-1-5. Graduated driver license; persons under eighteen (18) years of age [NEW]

595:10-1-6. Application for a ~~Class D~~ driver license for persons eighteen (18) years of age or older; ~~Class D~~ driving privileges; restrictions and conditions [AMENDED]

Part 3. Driver License Renewal

595:10-1-10. Procedure for obtaining a renewal driver license [AMENDED]

595:10-1-12. Oklahoma licensee temporarily residing out of the state [AMENDED]

Part 5. Driver License Replacement

595:10-1-18. Procedure for obtaining a replacement driver license [AMENDED]

595:10-1-19. Oklahoma licensee temporarily residing out of the state [NEW]

Part 7. Identification Cards

595:10-1-25. Procedure for obtaining an identification card [AMENDED]

595:10-1-26. Procedure for obtaining a renewal identification card [AMENDED]

595:10-1-27. Procedure for obtaining a replacement identification card [AMENDED]

595:10-1-28. Oklahoma identification card holder temporarily residing out of the state [NEW]

Part 9. Change of Name on a Driver License or Identification Card

595:10-1-35. Procedure to make a change of name on a driver license or an identification card [AMENDED]

Part 13. Motor License Agents

595:10-1-50. Identification required [AMENDED]

595:10-1-51. Operational procedures [AMENDED]

595:10-1-52. Photographic procedures [AMENDED]

595:10-1-56. ~~Renewals~~ Renewal of driver license or identification cards [AMENDED]

595:10-1-57. Replacement of driver license or identification card [AMENDED]

595:10-1-58. Restrictions and endorsements on driver licenses [AMENDED]

595:10-1-64. Identification ~~cards~~ card application and renewal [AMENDED]

Part 15. Revocation and Reinstatement of Driver License

595:10-1-76. Ignition interlock requirement for reinstatement [NEW]

Part 19. Driver License and Identification Card Content

595:10-1-91. Information displayed on driver licenses [AMENDED]

595:10-1-93. Information displayed on identification cards [AMENDED]

Subchapter 3. Examination

595:10-3-4. Application for examination [AMENDED]

Subchapter 5. Medical Aspects

595:10-5-12. Alcohol and/or other intoxicating substance abuse [AMENDED]

SUBMITTED TO GOVERNOR:

March 29, 2006

SUBMITTED TO HOUSE:

March 29, 2006

SUBMITTED TO SENATE:

March 29, 2006

[OAR Docket #06-981; filed 5-22-06]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 25. WRECKERS AND TOWING SERVICES

[OAR Docket #06-983]

RULEMAKING ACTION:

Submission for gubernatorial and legislative review.

RULES:

Subchapter 3. Wrecker License

595:25-3-1. General requirements [AMENDED]

595:25-3-2. Applications [AMENDED]

Subchapter 5. All Wrecker Operators

595:25-5-1. Physical requirements for storage facility [AMENDED]

595:25-5-3. Operation [AMENDED]

Subchapter 7. Class AA Operators

595:25-7-1. Equipment requirements for all Class AA vehicles [AMENDED]

Subchapter 9. Oklahoma Highway Patrol Rotation Log - Additional Requirements

595:25-9-2. Operator requirements [AMENDED]
SUBMITTED TO GOVERNOR:
March 29, 2006
SUBMITTED TO HOUSE:
March 29, 2006
SUBMITTED TO SENATE:
March 29, 2006

[OAR Docket #06-983; filed 5-22-06]

TITLE 753. UNIVERSITY HOSPITALS TRUST
CHAPTER 1. GENERAL AGENCY RULES

[OAR Docket #06-974]

RULEMAKING ACTION:
Submission for gubernatorial and legislative review
RULES:
Subchapter 1. General Provisions [NEW]
753:1-1-1. through 753:1-1-8. [NEW]
Subchapter 3. General Operations of the University Hospitals Trust [NEW]
753:1-3-1. through 753:1-3-5. [NEW]
Subchapter 5. Administrative Rules [NEW]
753:1-5-1. through 753:1-5-2. [NEW]
Subchapter 7. Formal and Informal Procedures [NEW]
753:1-7-1. through 753:1-7-4 [NEW]
SUBMITTED TO GOVERNOR
May 18, 2006
SUBMITTED TO HOUSE:
May 18, 2006
SUBMITTED TO SENATE:
May 18, 2006

[OAR Docket #06-974; filed 5-18-06]

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 10. OKLAHOMA ACCOUNTANCY BOARD
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #06-975]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
10:1-1-4.1. [AMENDED]
GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-975; filed 5-18-06]

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

[OAR Docket #06-976]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
10:15-1-2. [AMENDED]
Subchapter 18. Computer-Based Examination
10:15-18-4. [AMENDED]
10:15-18-9. [AMENDED]
Subchapter 27. Fees
10:15-27-13. [AMENDED]
Subchapter 29. Continuing Professional Education [REVOKED]
10:15-29-1.1. [REVOKED]
10:15-29-3. through 10:15-29-10. [REVOKED]
Subchapter 30. Continuing Professional Education
10:15-30-1. through 10:15-30-8. [AMENDED]
10:15-30-9. [NEW]
Subchapter 32. Standards For Continuing Professional Education (CPE) Programs
10:15-32-5. [AMENDED]
Subchapter 33. Peer Review
10:15-33-1. [AMENDED]
10:15-33-2. [AMENDED]
10:15-33-3. [AMENDED]
10:15-33-3.1. [NEW]
10:15-33-5. [AMENDED]
10:15-33-6. [AMENDED]
10:15-33-7. [AMENDED]
Subchapter 39. Rules of Professional Conduct
10:15-39-1. [AMENDED]
Subchapter 43. Audits Performed in Accordance with Government Auditing Standards. [NEW]
10:15-43-1. through 10:15-43-6. [NEW]
GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-976; filed 5-18-06]

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

[OAR Docket #06-1071]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules.
RULES:
Subchapter 1. Individual Proceedings [NEW]
38:1-1-1. Purpose [NEW]
38:1-1-2. Definitions [NEW]
38:1-1-3. Individual proceedings [NEW]
38:1-1-5. Receiving complaints [NEW]
38:1-1-6. Service of petition and notice [NEW]
38:1-1-7. Emergency actions [NEW]
38:1-1-8. Procedures in individual proceedings [NEW]
38:1-1-9. Continuances [NEW]
38:1-1-10. Discovery [NEW]
38:1-1-11. Protective orders [NEW]
38:1-1-12. Subpoenas [NEW]
38:1-1-13. Conduct and record of hearing [NEW]
38:1-1-14. Sanctions for non-compliance with hearing and discovery procedures [NEW]
38:1-1-15. Order of hearing [NEW]
38:1-1-16. Proposed order and settlement [NEW]
Subchapter 3. Administrative Operations [NEW]
38:1-3-1. Purpose [NEW]
38:1-3-6. Agency administration [NEW]
GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-1071; filed 5-25-06]

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

[OAR Docket #06-1072]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules.
RULES:
Subchapter 1. General Provisions [NEW]
38:10-1-1. Applicability [NEW]
38:10-1-2. Definitions [NEW]
38:10-1-3. Compliance with laws and rules [NEW]
38:10-1-4. Organization [NEW]
38:10-1-5. Public records [NEW]
38:10-1-6. Requests for agency public information [NEW]
38:10-1-7. Forms [NEW]
38:10-1-8. Procedures to secure a declaratory ruling as to the applicability of any rules or order of the Board [NEW]
38:10-1-9. Procedures to petition the Board to request the promulgation, amendment or repeal of a rule [NEW]
Subchapter 3. Rules of Professional Conduct [NEW]
38:10-3-1. Purpose [NEW]
38:10-3-2. Code of ethics [NEW]
38:10-3-3. Client welfare [NEW]
38:10-3-4. Professional standards [NEW]
38:10-3-5. Relations with the public and other professions [NEW]
38:10-3-6. Failure to comply [NEW]
Subchapter 5. Fitness of Applicants [NEW]
38:10-5-1. Purpose [NEW]
38:10-5-2. Fitness for licensure or certification [NEW]
38:10-5-3. Materials considered in determining fitness [NEW]
Subchapter 7. Application [NEW]
38:10-7-1. Purpose [NEW]
38:10-7-2. Requirements for licensure or certification [NEW]
38:10-7-3. Private or independent practice [NEW]
38:10-7-5. Issuance of license or certification [NEW]
38:10-7-6. Application [NEW]
38:10-7-7. Examinations [NEW]
38:10-7-8. Renewal of license or certification [NEW]
38:10-7-9. Reciprocity [NEW]
Subchapter 9. Supervision [NEW]
38:10-9-1. Purpose [NEW]
38:10-9-2. Supervision of work experience [NEW]
38:10-9-4. Approved supervisor status [NEW]
Subchapter 11. Fees [NEW]
38:10-11-1. Schedule of fees [NEW]
38:10-11-2. Method of payment [NEW]
38:10-11-3. Review of fees [NEW]
Subchapter 13. Continuing Education Requirements [NEW]
38:10-13-1. Purpose [NEW]
38:10-13-2. Continuing education standards [NEW]
38:10-13-3. Documentation of attendance [NEW]
38:10-13-4. Audit of continuing education submissions [NEW]
38:10-13-5. Failure to complete continuing education or submit verification [NEW]
38:10-13-6. Fraudulent continuing education submissions [NEW]
GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-1072; filed 5-25-06]

TITLE 75. ATTORNEY GENERAL
CHAPTER 1. ADMINISTRATION

[OAR Docket #06-979]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 1. Administration [NEW]
GUBERNATORIAL APPROVAL:
March 15, 2006

[OAR Docket #06-979; filed 5-19-06]

TITLE 75. ATTORNEY GENERAL
CHAPTER 15. STANDARDS AND CRITERIA FOR DOMESTIC VIOLENCE, ~~AND~~ SEXUAL ASSAULT AND BATTERERS INTERVENTION PROGRAMS

[OAR Docket #06-980]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 15. Standards and Criteria for Domestic Violence, ~~and~~ Sexual Assault and Batterers Intervention Programs [AMENDED]
GUBERNATORIAL APPROVAL:
March 15, 2006

[OAR Docket #06-980; filed 5-19-06]

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

[OAR Docket #06-969]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
140:1-1-2. [AMENDED]
Subchapter 3. Board Purpose and Organization
140:1-3-6. [AMENDED]
GUBERNATORIAL APPROVAL:
April 21, 2006

[OAR Docket #06-969; filed 5-16-06]

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 3. DISCIPLINARY PROCEDURES

[OAR Docket #06-968]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Filing and Disposition of Complaints
140:3-3-3. [AMENDED]
GUBERNATORIAL APPROVAL:
April 21, 2006

[OAR Docket #06-968; filed 5-16-06]

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 10. LICENSURE OF CHIROPRACTIC PHYSICIANS

[OAR Docket #06-967]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
140:10-1-2. [AMENDED]
Subchapter 5. Procedures for Renewal License
140:10-5-1. [AMENDED]
Subchapter 8. Administrative Fees
140:10-8-1. [AMENDED]
GUBERNATORIAL APPROVAL:
April 21, 2006

[OAR Docket #06-967; filed 5-16-06]

TITLE 140. BOARD OF CHIROPRACTIC EXAMINERS
CHAPTER 15. SPECIAL CERTIFICATES AND MISCELLANEOUS PROVISIONS

[OAR Docket #06-966]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 9. Chiropractic Specialties [NEW]
140:15-9-1. [NEW]
140:15-9-2. [NEW]
140:15-9-3. [NEW]
140:15-9-4. [NEW]
140:15-9-5. [NEW]
140:15-9-6. [NEW]
GUBERNATORIAL APPROVAL:
April 21, 2006

[OAR Docket #06-966; filed 5-16-06]

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

[OAR Docket #06-993]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Disclosures
160:10-5-1.2 [AMENDED]
GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-993; filed 5-22-06]

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

[OAR Docket #06-994]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 9. Special Rules for Certain Home Mortgage Transactions
160:45-9-2 [AMENDED]

GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-994; filed 5-22-06]

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

[OAR Docket #06-995]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
160:55-1-2 [AMENDED]
Subchapter 3. Licensing
160:55-3-1.4 [AMENDED]
GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-995; filed 5-22-06]

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

[OAR Docket #06-996]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
160:60-1-3 [AMENDED]
Subchapter 3. Licensing
160:60-3-1 [AMENDED]
160:60-3-2 [AMENDED]
160:60-3-5 [AMENDED]
160:60-3-6 [AMENDED]
Subchapter 7. Records
160:60-7-2 [AMENDED]
GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-996; filed 5-22-06]

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

[OAR Docket #06-997]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
160:70-1-3 [AMENDED]
Subchapter 11. Collection Practices [NEW]
160:70-11-1 through 160:70-11-8 [NEW]
GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-997; filed 5-22-06]

TITLE 165. CORPORATION COMMISSION
CHAPTER 5. RULES OF PRACTICE

[OAR Docket #06-1023]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
Part 1. General
165:5-1-7. Procedure for adoption of rules [AMENDED]
Subchapter 3. Fees
Part 1. General Provisions
165:5-3-1. Fees [AMENDED]
Subchapter 7. Commencement of a Cause
Part 3. Oil and Gas
165:5-7-14. Tax exemptions pursuant to OAC 165:10, Subchapter 21 [AMENDED]
Part 7. Motor Carrier
165:5-7-65. Applications relating to intrastate motor carrier authority and intrastate licenses [AMENDED]
Subchapter 25. Motor Carrier Tax and Registration Protests [NEW]
165:5-25-1. Purposes and general overview of motor carrier taxpayer/registrant protest procedure [NEW]
165:5-25-2. Applications for hearing [NEW]
165:5-25-3. Representation and participation in administrative proceedings [NEW]
165:5-25-4. Burden of proof [NEW]
165:5-25-5. Effective date of the subchapter [NEW]
GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-1023; filed 5-22-06]

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

[OAR Docket #06-1024]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 10. Oil and Gas Conservation [AMENDED]
GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-1024; filed 5-22-06]

TITLE 165. CORPORATION COMMISSION CHAPTER 15. FUEL INSPECTION

[OAR Docket #06-1025]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 15 [AMENDED]
GUBERNATORIAL APPROVAL:
April 17, 2006

[OAR Docket #06-1025; filed 5-22-06]

TITLE 165. CORPORATION COMMISSION CHAPTER 25. UNDERGROUND STORAGE TANKS

[OAR Docket #06-1026]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 25 [AMENDED]
GUBERNATORIAL APPROVAL:
April 21, 2006

[OAR Docket #06-1026; filed 5-22-06]

TITLE 165. CORPORATION COMMISSION CHAPTER 26. ABOVEGROUND STORAGE TANKS

[OAR Docket #06-1027]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 26 [AMENDED]
GUBERNATORIAL APPROVAL:
April 17, 2006

[OAR Docket #06-1027; filed 5-22-06]

TITLE 165. CORPORATION COMMISSION CHAPTER 27. INDEMNITY FUND

[OAR Docket #06-1028]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
165:27-1-2. Definitions [AMENDED]
165:27-1-4. Authority [AMENDED]
165:27-1-6. Prescribed forms [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]
GUBERNATORIAL APPROVAL:
April 21, 2006

[OAR Docket #06-1028; filed 5-22-06]

TITLE 165. CORPORATION COMMISSION CHAPTER 30. MOTOR CARRIERS

[OAR Docket #06-1029]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 30 [AMENDED]
GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-1029; filed 5-22-06]

TITLE 170. DEPARTMENT OF CORRECTIONS
CHAPTER 30. TUITION ASSISTANCE PROGRAM

[OAR Docket #06-1091]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
170:30-1-3. [AMENDED]
170:30-1-7. [AMENDED]
GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-1091; filed 5-25-06]

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

[OAR Docket #06-908]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Administrative Fine Schedule
310:110-5-6. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-908; filed 5-11-06]

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

[OAR Docket #06-909]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
310:205-1-2. [AMENDED]
Subchapter 3. License Requirements
310:205-3-1. [AMENDED]
310:205-3-2. [AMENDED]
310:205-3-3. [AMENDED]
310:205-3-4. [AMENDED]
310:205-3-6. [REVOKED]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-909; filed 5-11-06]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 210. BARBERS

[OAR Docket #06-910]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Examinations
310:210-3-3. [AMENDED]
Subchapter 5. Licensing
310:210-5-8. [AMENDED]
APPENDIX A. Barber Student Curriculum and Hours [REVOKED]
APPENDIX A. Barber Student Curriculum and Hours [NEW]
APPENDIX C. Barber Apprentice Curriculum and Hours [REVOKED]
APPENDIX C. Barber Apprentice Curriculum and Hours [NEW]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-910; filed 5-11-06]

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

[OAR Docket #06-911]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 256. Food Service Establishments [REVOKED]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-911; filed 5-11-06]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 257. FOOD SERVICE ESTABLISHMENTS

[OAR Docket #06-912]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 257. Food Service Establishments [NEW]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-912; filed 5-11-06]

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

[OAR Docket #06-913]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
310:276-1-3. [AMENDED]
Subchapter 9. Examination Applications, Examinations, Course Approval Requirements, Instructor Requirements, Continuing Education, Denied Application Appeal, Submission of Records, and Continuing Education Reciprocity
310:276-9-2. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-913; filed 5-11-06]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 355. SMOKING IN PUBLIC PLACES AND INDOOR WORKPLACES

[OAR Docket #06-914]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 355. Smoking in Public Places and Indoor Workplaces [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-914; filed 5-11-06]

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

[OAR Docket #06-915]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Rules of Professional Conduct
310:400-5-1. [AMENDED]
310:400-5-3. [AMENDED]
Subchapter 7. Application for Licensure
310:400-7-2. [AMENDED]
310:400-7-2.1. [AMENDED]
Subchapter 9. Licensure Examinations
310:400-9-1. [AMENDED]
Subchapter 11. Supervised Experience Requirements
310:400-11-1. [AMENDED]
310:400-11-2. [AMENDED]
310:400-11-3. [AMENDED]
310:400-11-4. [AMENDED]
310:400-11-5. [AMENDED]
Subchapter 15. Issuance and Maintenance of License
310:400-15-3. [AMENDED]
310:400-15-4. [AMENDED]
310:400-15-5. [AMENDED]
310:400-15-6. [AMENDED]
310:400-15-9. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-915; filed 5-11-06]

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

[OAR Docket #06-916]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Forms
310:403-5-1. [AMENDED}
310:403-5-2. [AMENDED]
Subchapter 7. Rules of Professional Conduct
310:403-7-2. [AMENDED]
310:403-7-3. [AMENDED]
310:403-7-4.1. [AMENDED]
Subchapter 11. Application Procedures
310:403-11-6. [AMENDED]
310:403-11-7. [AMENDED]
310:403-11-8. [AMENDED]

310:403-11-9. [AMENDED]
310:403-11-10. [AMENDED]
310:403-11-11. [AMENDED]
Subchapter 15. Supervised Experience Requirement
310:403-15-2. [AMENDED]
310:403-15-3. [AMENDED]
310:403-15-4. [AMENDED]
310:403-15-7. [AMENDED]
Subchapter 19. Licensure Examination
310:403-19-1.1. [NEW]
310:403-19-6.1. [NEW]
Subchapter 21. Continuing Education Requirements
310:403-21-3.1. [NEW]
310:403-21-4. [AMENDED]
Subchapter 25. License and Specialty Renewal
310:403-25-11. [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-916; filed 5-11-06]

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

[OAR Docket #06-917]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. Rules of Professional Conduct
310:405-3-2. [AMENDED]
310:405-3-3. [AMENDED]
310:405-3-4.1. [NEW]
Subchapter 7. Application Procedures
310:405-7-1. [AMENDED]
310:405-7-2. [AMENDED]
310:405-7-4. [AMENDED]
310:405-7-5. [AMENDED]
310:405-7-6. [AMENDED]
310:405-7-7. [AMENDED]
310:405-7-8. [AMENDED]
Subchapter 9. Academic Requirements
310:405-9-2. [AMENDED]
Subchapter 11. Supervised Experience Requirement
310:405-11-1. [AMENDED]
310:405-11-2. [AMENDED]
310:405-11-5. [AMENDED]
310:405-11-6. [AMENDED]
310:405-11-7. [AMENDED]
Subchapter 15. Licensure Examinations
310:405-15-1. [AMENDED]
310:405-15-4. [AMENDED]
310:405-15-8. [AMENDED]
Subchapter 17. Continuing Education Requirement
310:405-17-6.2. [AMENDED]
Subchapter 23. License and Specialty Late Renewal and Expiration
310:405-23-3. [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-917; filed 5-11-06]

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

[OAR Docket #06-918]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Chapter 641. Emergency Medical Services [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-918; filed 5-11-06]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 657. CERTIFIED WORKPLACE MEDICAL PLANS

[OAR Docket #06-919]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Chapter 657. Certified Workplace Medical Plans [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-919; filed 5-11-06]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 661. HOSPICE

[OAR Docket #06-920]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
310:661-1-2. [AMENDED]
Subchapter 2. Licenses
310:661-2-1. [AMENDED]

310:661-2-2. [AMENDED]
310:661-2-4. [AMENDED]
310:661-2-5. [AMENDED]
310:661-2-6. [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-920; filed 5-11-06]

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

[OAR Docket #06-921]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Administration
310:675-7-9.1. [AMENDED]
Subchapter 9. Resident Care Services
310:675-9-1.1. [AMENDED]
310:675-9-5.1. [AMENDED]
Subchapter 13. Staff Requirements
310:675-13-5. [AMENDED]
Subchapter 15. Temporary Manager or Receiver
310:675-15-3.1. [NEW]
Subchapter 19. Feeding Assistants [NEW]
310:675-19-1. through 310:675-19-8 [NEW]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-921; filed 5-11-06]

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

[OAR Docket #06-922]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 13. Certified Medication Aides
310:677-13-1. [AMENDED]
310:677-13-2. [AMENDED]
310:677-13-3. [AMENDED]
310:677-13-4. [AMENDED]
310:677-13-5. [AMENDED]
310:677-13-6. [NEW]
310:677-13-7. [NEW]
310:677-13-8. [NEW]
310:677-13-9. [NEW]
310:677-13-10. [NEW]
310:677-13-11. [NEW]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-922; filed 5-11-06]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #06-930]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Formal and Informal Procedures
317:1-3-5. [REVOKED]
Subchapter 7. Compliance with the Americans with Disabilities Act of 1990
317:1-7-6. through 317:1-7-6.1. [AMENDED]
Subchapter 9. Civil Rights and Nondiscrimination
317:1-9-7. through 317:1-9-8. [REVOKED]
(Reference APA WF # 05-24B)
GUBERNATORIAL APPROVAL:
April 28, 2006

[OAR Docket #06-930; filed 5-15-06]

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

[OAR Docket #06-949]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
317:2-1-1. through 317:2-1-2. [AMENDED]
317:2-1-2.1. through 317:2-1-2.3. [REVOKED]
317:2-1-4. [REVOKED]
317:2-1-5. through 317:2-1-13. [NEW]
(Reference APA WF # 05-24C)
GUBERNATORIAL APPROVAL:
April 28, 2006

[OAR Docket #06-949; filed 5-15-06]

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

[OAR Docket #06-925]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-59. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 63. Ambulatory Surgical Centers
317:30-5-566. [AMENDED]
(Reference APA WF # 05-20)
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[OAR Docket #06-925; filed 5-15-06]

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

[OAR Docket #06-926]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 3. Hospitals
317:30-5-47. [AMENDED]
(Reference APA WF # 05-21)
GUBERNATORIAL APPROVAL:
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[OAR Docket #06-926; filed 5-15-06]

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

[OAR Docket #06-927]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 41. Family Support Services
317:30-5-412. [AMENDED]
(Reference APA WF # 05-22)
GUBERNATORIAL APPROVAL:
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[OAR Docket #06-927; filed 5-15-06]

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

[OAR Docket #06-928]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-47. through 317:30-3-56. [REVOKED]
Part 4. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program/Child Health Services [NEW]
317:30-3-65. through 317:30-3-65.11. [NEW]
Subchapter 5. Individual Providers and Specialties
Part 15. Child Health Centers
317:30-5-195. through 317:30-5-199. [AMENDED]
317:30-5-200. [REVOKED]
317:30-5-201. [AMENDED]
Part 35. Rural Health Clinics
317:30-5-356. [AMENDED]
Part 37. Advanced Practice Nurse
317:30-5-376. [AMENDED]
Part 45. Optometrists
317:30-5-431. [AMENDED]
(Reference APA WF # 05-23)
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[OAR Docket #06-928; filed 5-15-06]

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

[OAR Docket #06-929]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-19. through 317:30-3-21. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-25. [AMENDED]

Part 3. Hospitals
317:30-5-41. [AMENDED]
Part 4. Long Term Care Hospitals
317:30-5-62. [AMENDED]
Part 9. Long Term Care Facilities
317:30-5-124. [AMENDED]
317:30-5-131.1. through 317:30-5-131.2. [AMENDED]
Part 32. Soonerride Non-Emergency Transportation
317:30-5-327. [AMENDED]
Part 65. Case Management Services for Over 21
317:30-5-586.1. [AMENDED]
Part 83. Residential Behavior Management Services in Foster Care Settings
317:30-5-746. [AMENDED]
(Reference APA WF # 05-24A)
GUBERNATORIAL APPROVAL:
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[OAR Docket #06-929; filed 5-15-06]

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

[OAR Docket #06-932]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-25. [AMENDED]
(Reference APA WF # 05-25)
GUBERNATORIAL APPROVAL:
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[OAR Docket #06-932; filed 5-15-06]

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

[OAR Docket #06-934]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 89. Radiological Mammographer
317:30-5-901. [AMENDED]
317:30-5-904. [AMENDED]
(Reference APA WF # 05-28)
GUBERNATORIAL APPROVAL:
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[OAR Docket #06-934; filed 5-15-06]

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

[OAR Docket #06-935]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 105. Residential Behavioral Management Services in Group Settings and Non-secure Diagnostic and Evaluation Centers
317:30-5-1043. [AMENDED]
(Reference APA WF # 05-29)
GUBERNATORIAL APPROVAL:
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[OAR Docket #06-935; filed 5-15-06]

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

[OAR Docket #06-936]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Services
317:30-5-240. through 317:30-5-241. [AMENDED]
317:30-5-248. [AMENDED]
(Reference APA WF # 05-30)
GUBERNATORIAL APPROVAL:
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[OAR Docket #06-936; filed 5-15-06]

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

[OAR Docket #06-937]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. General Provider Policies
Part 1. General Scope and Administration
317:30-3-4.1. [AMENDED]
317:30-3-15. [AMENDED]
(Reference APA WF # 05-32)
GUBERNATORIAL APPROVAL:
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[OAR Docket #06-937; filed 5-15-06]

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

[OAR Docket #06-938]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 83. Residential Behavior Management Services in Foster Care Settings
317:30-5-740. through 317:30-5-742. [AMENDED]
317:30-5-742.2. [AMENDED]
317:30-5-743.1. [NEW]
317:30-5-745. [AMENDED]
(Reference APA WF # 05-35)
GUBERNATORIAL APPROVAL:
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[OAR Docket #06-938; filed 5-15-06]

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

[OAR Docket #06-940]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 73. Early Intervention Services
317:30-5-640. through 317:30-5-641.1. [AMENDED]
317:30-5-641.2. [REVOKED]
317:30-5-641.3. [AMENDED]
317:30-5-642. [REVOKED]
317:30-5-644. [AMENDED]
(Reference APA WF # 05-37)
GUBERNATORIAL APPROVAL:
April 28, 2006

[OAR Docket #06-940; filed 5-15-06]

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

[OAR Docket #06-941]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 25. Psychologists
317:30-5-275. [AMENDED]
317:30-5-276. [AMENDED]
317:30-5-278.1. [AMENDED]
(Reference APA WF # 05-38)
GUBERNATORIAL APPROVAL:
April 28, 2006

[OAR Docket #06-941; filed 5-15-06]

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

[OAR Docket #06-942]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 110. Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/Us) [NEW]
317:30-5-1085. through 317:30-5-1099. [NEW]
(Reference APA WF # 05-39)
GUBERNATORIAL APPROVAL:
April 28, 2006

[OAR Docket #06-942; filed 5-15-06]

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

[OAR Docket #06-943]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-57. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-2. [AMENDED]
Part 5. Pharmacists
317:30-5-77.2. [AMENDED]
(Reference APA WF # 05-40)
GUBERNATORIAL APPROVAL:
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[OAR Docket #06-943; filed 5-15-06]

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

[OAR Docket #06-944]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. General Provider Policies
Part 5. Eligibility
317:30-3-78. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 79. Dentists
317:30-5-695. [AMENDED]
317:30-5-695.1. [AMENDED]
317:30-5-695.2. [AMENDED]
317:30-5-696. [AMENDED]
317:30-5-698. through 317:30-5-701. [AMENDED]
317:30-5-703. through 317:30-5-705. [AMENDED]
(Reference APA WF # 05-42)
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[OAR Docket #06-944; filed 5-15-06]

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

[OAR Docket #06-945]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 67. Behavioral Health Case Management Services for Individuals under 21 Years of Age
317:30-5-595. through 317:30-5-596.2. [AMENDED]
317:30-5-597. through 317:30-5-598. [REVOKED]
317:30-5-599. [AMENDED]
(Reference APA WF # 05-44)
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[OAR Docket #06-945; filed 5-15-06]

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

[OAR Docket #06-946]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 9. Long Term Care Facilities
317:30-5-123. [AMENDED]
(Reference APA WF # 05-45A)
GUBERNATORIAL APPROVAL:
April 28, 2006

[OAR Docket #06-946; filed 5-15-06]

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

[OAR Docket #06-948]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Individual Providers and Specialties
Part 6. Inpatient Psychiatric Hospitals
317:30-5-95. through 317:30-5-95.3. [AMENDED]
317:30-5-95.4. through 317:30-5-95.40. [NEW]
317:30-5-96. through 317:30-5-96.1. [AMENDED]
317:30-5-96.2. through 317:30-5-96.5. [NEW]
(Reference APA WF # 05-48)
GUBERNATORIAL APPROVAL:
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[OAR Docket #06-948; filed 5-15-06]

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

[OAR Docket #06-931]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Coverage and Exclusions
317:35-3-2. [AMENDED]
Subchapter 15. Personal Care Services
317:35-15-8.1. [AMENDED]
(Reference APA WF # 05-24E)
GUBERNATORIAL APPROVAL:
April 28, 2006

[OAR Docket #06-931; filed 5-15-06]

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

[OAR Docket #06-939]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 18. Programs of All-Inclusive Care for the Elderly [NEW]
317:35-18-1. through 317:35-18-11. [NEW]
(Reference APA WF # 05-36)
GUBERNATORIAL APPROVAL:
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[OAR Docket #06-939; filed 5-15-06]

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

[OAR Docket #06-947]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 19. Nursing Facility Services
317:35-19-8. [AMENDED]
317:35-19-9. [AMENDED]
317:35-19-14. [AMENDED]
317:35-19-16. [AMENDED]
(Reference APA WF # 05-45B)
GUBERNATORIAL APPROVAL:
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[OAR Docket #06-947; filed 5-15-06]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 45. OKLAHOMA EMPLOYER AND EMPLOYEE PARTNERSHIP FOR INSURANCE COVERAGE

[OAR Docket #06-933]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions [NEW]
317:45-1-2. [NEW]
Subchapter 3. Carriers [NEW]
317:45-3-1. [NEW]
Subchapter 7. Employer Eligibility [NEW]
317:45-7-1. through 317:45-7-2. [NEW]
317:45-7-5. [NEW]
Subchapter 9. Employee Eligibility [NEW]
317:45-9-1. [NEW]
(Reference APA WF # 05-27)
GUBERNATORIAL APPROVAL:
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[OAR Docket #06-933; filed 5-15-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 25. ENTRIES AND DECLARATIONS

[OAR Docket #06-1133]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
325:25-1-5. [AMENDED]
325:25-1-17. [AMENDED]
GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-1133; filed 5-26-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 40. VETERINARIAN PRACTICES

[OAR Docket #06-1134]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
325:40-1-5. [AMENDED]
GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-1134; filed 5-26-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 45. MEDICATION AND EQUINE TESTING PROCEDURES

[OAR Docket #06-1135]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
325:45-1-2. [AMENDED]
325:45-1-4. [AMENDED]
325:45-1-5. [AMENDED]
325:45-1-6. [AMENDED]
325:45-1-7. [AMENDED]
325:45-1-8. [REVOKED]
325:45-1-9. [AMENDED]
325:45-1-10. [REVOKED]
325:45-1-11. [AMENDED]
325:45-1-12. [AMENDED]
325:45-1-13. [AMENDED]
325:45-1-14. [AMENDED]
325:45-1-15. [AMENDED]
325:45-1-16. [AMENDED]
325:45-1-17. [AMENDED]
325:45-1-18. [AMENDED]
325:45-1-19. [AMENDED]
325:45-1-20. [AMENDED]
325:45-1-21. [AMENDED]
325:45-1-22. [AMENDED]
325:45-1-23. [AMENDED]
325:45-1-24. [AMENDED]
325:45-1-25. [REVOKED]
325:45-1-26. [NEW]
325:45-1-27. [NEW]
325:45-1-28. [NEW]
325:45-1-29. [NEW]
GUBERNATORIAL APPROVAL:
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[OAR Docket #06-1135; filed 5-26-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 70. OBJECTIONS AND PROTESTS; HEARINGS AND APPEALS

[OAR Docket #06-1136]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
325:70-1-22. [AMENDED]
GUBERNATORIAL APPROVAL:
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[OAR Docket #06-1136; filed 5-26-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 80. GAMING LICENSING REQUIREMENTS

[OAR Docket #06-1137]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions [NEW]
325:80-1-1. [NEW]
325:80-1-2. [NEW]
325:80-1-3. [NEW]
Subchapter 3. Gaming License Classifications [NEW]
325:80-3-1. [NEW]
Subchapter 5. Gaming Licenses and Applications [NEW]
325:80-5-1. [NEW]
325:80-5-2. [NEW]
325:80-5-3. [NEW]
325:80-5-4. [NEW]
325:80-5-5. [NEW]
325:80-5-6. [NEW]
Subchapter 7. Requirements for Racetrack Gaming Operator License and Recipient Racetrack Gaming License [NEW]
325:80-7-1. [NEW]
325:80-7-2. [NEW]
325:80-7-3. [NEW]
325:80-7-4. [NEW]
325:80-7-5. [NEW]
Subchapter 9. Requirements for Manufacturer, Distributor, or Manufacturer/Distributor, and Their Employee License Applicants [NEW]

325:80-9-1. [NEW]
325:80-9-2. [NEW]
Subchapter 11. Requirements for Vendor License [NEW]
325:80-11-1. [NEW]
325:80-11-2. [NEW]
325:80-11-3. [NEW]
325:80-11-4. [NEW]
Subchapter 13. Requirements for Key Executive License or Gaming Employee License and Amendments to Any Employee License [NEW]
325:80-13-1. [NEW]
325:80-13-2. [NEW]
325:80-13-3. [NEW]
325:80-13-4. [NEW]
325:80-13-5. [NEW]
325:80-13-6. [NEW]
325:80-13-7. [NEW]
325:80-13-8. [NEW]
Subchapter 15. Requirements for Independent Testing Laboratory Licenses [NEW]
325:80-15-1. [NEW]
Subchapter 17. Fees and Assessments [NEW]
325:80-17-1. [NEW]
Subchapter 19. Consideration of License Application and Licensee Disciplinary Actions [NEW]
325:80-19-1. [NEW]
325:80-19-2. [NEW]
325:80-19-3. [NEW]
325:80-19-4. [NEW]
325:80-19-5. [NEW]

GUBERNATORIAL APPROVAL:
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[OAR Docket #06-1137; filed 5-26-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 85. GAMING MACHINE SPECIFICATIONS AND USE AND OPERATION REQUIREMENTS

[OAR Docket #06-1138]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions [NEW]
325:85-1-1. [NEW]
325:85-1-2. [NEW]
Subchapter 3. Authorized Games [NEW]
325:85-3-1. [NEW]
325:85-3-2. [NEW]
Subchapter 5. Electronic Amusement Games Specifications [NEW]
325:85-5-1. [NEW]
Subchapter 7. Electronic Bonanza-Style Bingo Games Specifications [NEW]
325:85-7-1. [NEW]
Subchapter 9. Electronic Instant Bingo Games Specifications [NEW]
325:85-9-1. [NEW]
Subchapter 11. Required Certification and Approval of Electronic Amusement Games, Electronic Bonanza-Style Bingo Games and Electronic Instant Bingo Games [NEW]
325:85-11-1. [NEW]
325:85-11-1.1. [NEW]
325:85-11-5. [NEW]
325:85-11-8.1. [NEW]
325:85-11-9. [NEW]
325:85-11-12. [NEW]
Subchapter 12. Required Certification and Verification of Compact Electronic Games and Non-Compact Electronic Games [NEW]
325:85-12-1. [NEW]
325:85-12-2. [NEW]
325:85-12-3. [NEW]
325:85-12-4. [NEW]
325:85-12-5. [NEW]
325:85-12-6. [NEW]
325:85-13-1. [NEW]
Subchapter 13. Cashless Transactions [NEW]
325:85-13-4. [NEW]
325:85-13-5. [NEW]
325:85-13-6. [NEW]
325:85-13-7. [NEW]
325:85-13-8. [NEW]
Subchapter 15. Use and Operation Requirements Applicable to Electronic Amusement Games, Electronic Bonanza-Style Bingo Games and Electronic Instant Bingo Games [NEW]
325:85-15-1. [NEW]
325:85-15-3. [NEW]
325:85-15-4. [NEW]
325:85-15-8. [NEW]
325:85-15-9. [NEW]
325:85-15-10. [NEW]
325:85-15-11. [NEW]
325:85-15-12. [NEW]
325:85-15-13. [NEW]
325:85-15-14. [NEW]
325:85-15-15. [NEW]
325:85-15-16. [NEW]
325:85-15-17. [NEW]
325:85-15-18. [NEW]
325:85-15-19. [NEW]
325:85-15-20. [NEW]
325:85-15-21. [NEW]
325:85-15-21. [NEW]
325:85-15-22. [NEW]
325:85-15-23. [NEW]

325:85-15-24. [NEW]
325:85-15-25. [NEW]
325:85-15-26. [NEW]
325:85-15-27. [NEW]
325:85-15-28. [NEW]
325:85-15-29. [NEW]
325:85-15-33. [NEW]
325:85-15-34. [NEW]
325:85-15-35. [NEW]
325:85-15-36. [NEW]
325:85-15-39. [NEW]
325:85-15-40. [NEW]
325:85-15-42. [NEW]
325:85-15-43. [NEW]
325:85-15-44. [NEW]
325:85-15-45. [NEW]
325:85-15-46. [NEW]
325:85-15-47. [NEW]
325:85-15-48. [NEW]
325:85-15-49. [NEW]
325:85-15-50. [NEW]
325:85-15-51. [NEW]
325:85-15-52. [NEW]
325:85-15-53. [NEW]
325:85-15-54. [NEW]
325:85-15-55. [NEW]
325:85-15-56. [NEW]
325:85-15-57. [NEW]
325:85-15-58. [NEW]
325:85-15-59. [NEW]
325:85-15-60. [NEW]
325:85-15-61. [NEW]
325:85-15-62. [NEW]
325:85-15-63. [NEW]
325:85-15-64. [NEW]
Subchapter 20. Use and Operation Requirements Applicable to Compact Electronic Games and Non-Compact Electronic Games [NEW]
325:85-20-1. [NEW]
325:85-20-2. [NEW]
325:85-20-3. [NEW]
325:85-20-4. [NEW]
325:85-20-5. [NEW]
325:85-20-6. [NEW]
325:85-20-7. [NEW]
325:85-20-8. [NEW]
325:85-20-9. [NEW]
325:85-20-10. [NEW]
325:85-20-11. [NEW]
325:85-20-12. [NEW]
325:85-20-13. [NEW]
Subchapter 21. Accounting System Requirements [NEW]
325:85-21-2. [NEW]
325:85-21-6. [NEW]
325:85-21-8. [NEW]
325:85-21-9. [NEW]
325:85-21-10. [NEW]
325:85-21-11. [NEW]
325:85-21-12. [NEW]
325:85-21-13. [NEW]
325:85-21-17. [NEW]
325:85-21-18. [NEW]
325:85-21-19. [NEW]
325:85-21-21. [NEW]
325:85-21-22. [NEW]
325:85-21-23. [NEW]
325:85-21-24. [NEW]
325:85-21-25. [NEW]
325:85-21-26. [NEW]
325:85-21-27. [NEW]
325:85-21-28. [NEW]
325:85-21-29. [NEW]
325:85-21-30. [NEW]
325:85-21-31. [NEW]
325:85-21-32. [NEW]
Subchapter 25. Transportation, Receipt, Installation and Disposal of Gaming Machines [NEW]
325:85-25-1. [NEW]
325:85-25-2. [NEW]
325:85-25-3. [NEW]
325:85-25-4. [NEW]
325:85-25-5. [NEW]
325:85-25-6. [NEW]
325:85-25-7. [NEW]
Subchapter 27. Requirements for Audits Performed by Gaming Agents [NEW]
325:85-27-1. [NEW]

GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-1138; filed 5-26-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 90. GAMING OPERATIONS

[OAR Docket #06-1139]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions [NEW]
325:90-1-1. [NEW]
325:90-1-2. [NEW]
Subchapter 3. Security and Surveillance Minimum Requirements [NEW]
325:90-3-1. [NEW]
325:90-3-2. [NEW]
325:90-3-3. [NEW]
325:90-3-4. [NEW]
325:90-3-5. [NEW]

325:90-3-6. [NEW]
Subchapter 5. Unresolved Patron Disputes [NEW]
325:90-5-1. [NEW]
325:90-5-2. [NEW]
325:90-5-3. [NEW]
325:90-5-4. [NEW]
325:90-5-5. [NEW]
Subchapter 7. Smoking Regulations [NEW]
325:90-7-1. [NEW]

GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-1139; filed 5-26-06]

TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY CHAPTER 36. AFFORDABLE HOUSING TAX CREDIT PROGRAM

[OAR Docket #06-977]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. General Provisions
330:36-1-2 [AMENDED]
330:36-1-3.2 [AMENDED]
330:36-1-4 [AMENDED]
330:36-1-9 [AMENDED]
Subchapter 2. Allocation Procedures
330:36-2-1 [AMENDED]
330:36-2-2 [AMENDED]
330:36-2-3 [AMENDED]
330:36-2-5 [AMENDED]
330:36-2-7 [AMENDED]
330:36-2-9 [AMENDED]
330:36-2-11 [AMENDED]
330:36-2-12 [AMENDED]
330:36-2-13 [AMENDED]
330:36-2-13.1 [AMENDED]
330:36-2-13.2 [NEW]
330:36-2-17 [NEW]
Subchapter 4. Development Applications and Selection
330:36-4-1 [AMENDED]
330:36-4-2 [NEW]
330:36-4-2.1 [AMENDED]
330:36-4-2.2 [AMENDED]
330:36-4-3 [AMENDED]
Subchapter 6. Program Administration
330:36-6-1 [AMENDED]
330:36-6-3 [AMENDED]
330:36-6-5 [AMENDED]
330:36-6-7 [AMENDED]

GUBERNATORIAL APPROVAL:
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[OAR Docket #06-977; filed 5-19-06]

TITLE 330. OKLAHOMA HOUSING FINANCE AGENCY CHAPTER 36. AFFORDABLE HOUSING TAX CREDIT PROGRAM

[OAR Docket #06-978]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 8. Qualified Contract [NEW]
330:36-8-1 [NEW]
330:36-8-3 [NEW]
330:36-8-5 [NEW]
330:36-8-7 [NEW]
330:36-8-9 [NEW]
330:36-8-11 [NEW]

GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-978; filed 5-19-06]

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

[OAR Docket #06-1039]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 1. Human Resources Management Division (HRMD)
Part 4. Alcohol and Drug Testing ~~Policy~~ Rules Applicable to ~~Agency Facilities Providing Direct Care to Children or Individuals with Developmental Disabilities~~ All OKDHS Employees
340:2-1-40 through 340:2-1-44 [AMENDED]
(Reference APA WF# 06-03)

GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-1039; filed 5-23-06]

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

[OAR Docket #06-1041]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 15. Risk and Safety Management Program
Part 1. Risk Management Program
340:2-15-1 through 340:2-15-2 [AMENDED]
340:2-15-3 [REVOKED]
340:2-15-4 through 340:2-15-5 [AMENDED]
340:2-15-6 [REVOKED]
340:2-15-7 [NEW]
Part 3. Hazard Communication Program
340:2-15-25 [AMENDED]
340:2-15-26 [REVOKED]
340:2-15-27 [AMENDED]
340:2-15-27.1 [NEW]
340:2-15-28 [AMENDED]
340:2-15-29 through 340:2-15-33 [REVOKED]
Appendix L. Access Clause for Purchase Contract [REVOKED]
Appendix M. Material Safety Data Sheet Surrogate Statement [REVOKED]
(Reference APA WF# 06-02)
GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-1041; filed 5-23-06]

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

[OAR Docket #06-1043]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 35. Volunteer Services
340:2-35-4 [AMENDED]
(Reference APA WF#06-06)
GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-1043; filed 5-23-06]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 5. ADULT PROTECTIVE SERVICES

[OAR Docket #06-1045]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Investigation of Adult Protective Services Referrals
340:5-5-3 [AMENDED]
(Reference APA WF 06-05)
GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-1045; filed 5-23-06]

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

[OAR Docket #06-1047]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Financial Eligibility Criteria
Part 3. Income
340:50-7-31 [AMENDED]
Part 5. Determination of Income ~~and Deductions~~
340:50-7-49 through 340:50-7-53 [REVOKED]
(Reference APA WF# 06-04)
GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-1047; filed 5-23-06]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 105. AGING SERVICES DIVISION

[OAR Docket #06-1064]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 10. Policies and Procedures Manual for Title III of The Older Americans Act of 1965, as amended
Part 9. Fiscal and Administrative Policies for Area Agencies on Aging and Title III Projects
340:105-10-105.1. [AMENDED]
(Reference APA WF 06-01)

GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-1064; filed 5-24-06]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #06-1092]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
365:1-1-2. Office of the Insurance Commissioner
Subchapter 5. Rulemaking Procedures
365:1-5-1. Initiation of rulemaking~~; notice and public comment~~ [AMENDED]
365:1-5-2. Adoption of rules; filing and publication [REVOKED]
365:1-5-3. Effective date of rules [REVOKED]
365:1-5-4. Petitions for rulemaking [AMENDED]
GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-1092; filed 5-26-06]

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

[OAR Docket #06-1093]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Minimum Standards; Contract Guidelines
Part 17. Actuarial Opinion and Memorandum Regulation
365:10-5-170. Purpose [AMENDED]
365:10-5-171. Scope [AMENDED]
365:10-5-172. Definitions [AMENDED]
365:10-5-173. General requirements [AMENDED]
365:10-5-174. Required opinions [REVOKED]
365:10-5-175. Statement of actuarial opinion not including an asset adequacy analysis [REVOKED]
365:10-5-176. Statement of actuarial opinion based on an asset adequacy analysis [AMENDED]
365:10-5-177. Description of actuarial memorandum including an asset adequacy analysis [AMENDED]
365:10-5-178. Additional considerations for analysis [REVOKED]
Subchapter 23. Discount Medical Plan Organizations [NEW]
365:10-23-1. Forms [NEW]
365:10-23-2. Inducements [NEW]
Appendix S. Outline of Coverage Tables [REVOKED]
Appendix S. Outline of Coverage [NEW]
Appendix Z. Form Tabulating Reserves and Related Actuarial Terms [REVOKED]
Appendix Z. Asset Adequacy Test Amounts - Reserves and Liabilities [NEW]
Appendix GG. Information Provided Pursuant To Section 365:10-5-176(f)(1)(C)(ii) of the Actuarial Opinion and Memorandum Regulation [NEW]
GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-1093; filed 5-26-06]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 15. PROPERTY AND CASUALTY

[OAR Docket #06-1094]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
365:15-1-3. Property and casualty form filings [AMENDED]
Subchapter 7. Property And Casualty Competitive Loss Cost Rating Regulation
365:15-7-3. Property and casualty rate, loss cost and manual rule filings [AMENDED]
365:15-7-14. Delivery of policy to insured [AMENDED]
365:15-7-29. Workers' Compensation Insurance [NEW]
Subchapter 9. Medical Professional Liability Rate Setting
Appendix D. Notification of Policyholders of Application for Rate Change [REVOKED]
Appendix D. Format for Notification ofto Policyholders of Application for Rate Change [NEW]
GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-1094; filed 5-26-06]

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

[OAR Docket #06-1095]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. Agents, Brokers and Limited Representatives
365:25-3-1. Insurance agents continuing education [AMENDED]
Subchapter 5. Bail Bondsmen
Part 5. Genereal Provisions Pertaining to Bail Bondsmen
365:25-5-41. Special deposit [AMENDED]
GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-1095; filed 5-26-06]

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

[OAR Docket #06-1096]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 17. Consumer Protection In Annuity Transactions Regulation [NEW]
365:25-17-1. Purpose [NEW]
365:25-17-2. Scope [NEW]
365:25-17-3. Authority [NEW]
365:25-17-4. Exemptions [NEW]
365:25-17-5. Definitions [NEW]
365:25-17-6. Misrepresentation, fraud and incomplete comparisons of annuities [NEW]
365:25-17-7. Duties of insurers and of insurance producers [NEW]
365:25-17-8. Mitigation of responsibility [NEW]
365:25-17-9. Recordkeeping [NEW]
Subchapter 19. Annuity Disclosure Regulation [NEW]
365:25-19-1. Purpose [NEW]
365:25-19-2. Authority [NEW]
365:25-19-3. Applicability and scope [NEW]
365:25-19-4. Definitions [NEW]
365:25-19-5. Standards for the disclosure document and buyer's guide [NEW]
365:25-19-6. Report to contract owners [NEW]
365:25-19-7. Penalties [NEW]
365:25-19-8. Separability [NEW]
365:25-19-9. Effective date [NEW]
Appendix S. Buyer's Guide [NEW]
GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-1096; filed 5-26-06]

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

[OAR Docket #06-1097]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Life, Accident & Health Division and Consumer Assistance and Claims Division Rules
Part 9. HMO Requirements and Prohibitions
365:40-5-44. Internal grievance system [AMENDED]
GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-1097; filed 5-26-06]

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

[OAR Docket #06-950]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Function and Structure of the Office of Juvenile Affairs
377:1-1-5. Board of Juvenile Affairs [AMENDED]
GUBERNATORIAL APPROVAL:
April 4, 2006

[OAR Docket #06-950; filed 5-15-06]

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

[OAR Docket #06-952]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 13. Office of Public Integrity
Part 3. Requirements for Secure Juvenile Detention Centers
377:3-13-42. Juvenile rights [AMENDED]
377:3-13-43. Staff requirements [AMENDED]
GUBERNATORIAL APPROVAL:
April 25, 2006

[OAR Docket #06-952; filed 5-15-06]

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

[OAR Docket #06-953]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 13. Office of Public Integrity
Part 7. Requirements for Community Intervention Centers (CIC)
377:3-13-86. Organization, administration, and finance [AMENDED]
377:3-13-88. Personnel [AMENDED]
GUBERNATORIAL APPROVAL:
April 4, 2006

[OAR Docket #06-953; filed 5-15-06]

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

[OAR Docket #06-954]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Court
377:25-5-3. Certification Hearings [REVOKED]
Subchapter 7. Custody
Part 1. General Provisions
377:25-7-1. Definitions [REVOKED]
377:25-7-3. Placement of OJA Custody Juveniles [AMENDED]
377:25-7-4. Short term, up to thirty day intensive, highly structured placement [REVOKED]
Part 5. Rules of Supervised ~~Superviced~~ Community Placement [AMENDED]
377:25-7-27. Rules of Supervised Community Placement (SCP) [AMENDED]
377:25-7-28. Noncompliance ~~Non Compliance~~ with Supervised Community Placement Rules [AMENDED]
377:25-7-29. District review hearing [AMENDED]
GUBERNATORIAL APPROVAL:
April 4, 2006

[OAR Docket #06-954; filed 5-15-06]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 30. RESIDENTIAL SERVICES

[OAR Docket #06-955]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
377:30-1-1. Legal base, scope, and purpose [AMENDED]
Subchapter 3. OJA-operated Group Homes
377:30-3-1. Administration [REVOKED]
GUBERNATORIAL APPROVAL:
April 4, 2006

[OAR Docket #06-955; filed 5-15-06]

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

[OAR Docket #06-956]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 11. Juvenile Rules/discipline
377:35-11-2. Waiver of Intensive Treatment Program Transfer Hearing [REVOKED]
377:35-11-3. Intensive Treatment Program Transfer Hearing [AMENDED]
GUBERNATORIAL APPROVAL:
April 4, 2006

[OAR Docket #06-956; filed 5-15-06]

TITLE 460. DEPARTMENT OF MINES CHAPTER 1. OKLAHOMA MINING COMMISSION

[OAR Docket #06-1068]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 1. Oklahoma Mining Commission [AMENDED]
GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-1068; filed 5-25-06]

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

[OAR Docket #06-1069]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 10. Non-Coal Rules And Regulations [AMENDED]

GUBERNATORIAL APPROVAL:
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[OAR Docket #06-1069; filed 5-25-06]

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

[OAR Docket #06-1070]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Chapter 20. The Permanent Regulations Governing The Coal Reclamation Act of 1979 [AMENDED]
GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-1070; filed 5-25-06]

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

[OAR Docket #06-1067]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Academic Scholars Program
610:25-1-4. Eligibility Requirements and Term of Scholarship Award [AMENDED]
Subchapter 7. Oklahoma Tuition Aid Grant Program
610:25-7-6. Eligibility; amount of grant; application procedures and deadlines; disbursement of funds [AMENDED]
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]
GUBERNATORIAL APPROVAL:
April 4, 2006

[OAR Docket #06-1067; filed 5-24-06]

TITLE 710. OKLAHOMA TAX COMMISSION CHAPTER 10. AD VALOREM TAX

[OAR Docket #06-984]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 4. Annual Valuation Mandate
710:10-4-1. [AMENDED]
710:10-4-2. [AMENDED]
710:10-4-3. [AMENDED]
710:10-4-6. [AMENDED]
710:10-4-7. [AMENDED]
710:10-4-8. [AMENDED]
710:10-4-9. [AMENDED]
Subchapter 7. Manufacturing Facilities
710:10-7-2. [AMENDED]
710:10-7-2.1. [AMENDED]
710:10-7-4. [AMENDED]
710:10-7-5. [AMENDED]
710:10-7-6. [AMENDED]
710:10-7-10. [AMENDED]
710:10-7-11. [AMENDED]
710:10-7-12. [AMENDED]
710:10-7-13. [AMENDED]
710:10-7-14. [AMENDED]
710:10-7-15. [AMENDED]
710:10-7-16. [AMENDED]
710:10-7-17. [AMENDED]
710:10-7-22. [AMENDED]
710:10-7-23. [AMENDED]
710:10-7-24. [AMENDED]
710:10-7-25. [AMENDED]
Subchapter 12. Agricultural Land Conservation Adjustment
710:10-12-1. [AMENDED]
710:10-12-4. [AMENDED]
710:10-12-7. [AMENDED]
710:10-12-8. [AMENDED]
710:10-12-9. [AMENDED]
710:10-12-10. [AMENDED]
710:10-12-11. [AMENDED]
710:10-12-13. [AMENDED]
710:10-12-20. [AMENDED]
Subchapter 14. Full Fair Cash Value Exemption for Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate
710:10-14-1. [AMENDED]
710:10-14-3. [AMENDED]
710:10-14-5. [AMENDED]
710:10-14-6. [AMENDED]

GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-984; filed 5-22-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 35. ESTATES

[OAR Docket #06-985]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Determination of Oklahoma Taxable Estate
Part 9. Deductions; Exclusions; Exemptions
710:35-5-64. [REVOKED]
GUBERNATORIAL APPROVAL:
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[OAR Docket #06-985; filed 5-22-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 45. GROSS PRODUCTION

[OAR Docket #06-986]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 9. Exemption and Exclusions
Part 5. Horizontally Drilled Production Wells
710:45-9-27. [AMENDED]
710:45-9-28. [AMENDED]
Part 7. Incremental Production from Enhanced Recovery Projects or Properties
710:45-9-32. [AMENDED]
Part 9. Production Enhancement Projects
710:45-9-42. [AMENDED]
710:45-9-43. [AMENDED]
Part 11. Reestablishment of Production from an Inactive Well
710:45-9-52. [AMENDED]
710:45-9-53. [AMENDED]
Part 13. Deep Wells
710:45-9-60. [AMENDED]
710:45-9-62. [AMENDED]
710:45-9-62.1. [AMENDED]
710:45-9-64. [NEW]
Part 15. New Discovery Wells
710:45-9-72. [AMENDED]
710:45-9-73. [AMENDED]
Part 17. Economically At-Risk ~~Oil~~ Leases [AMENDED]
710:45-9-80. [AMENDED]
710:45-9-81. [AMENDED]
710:45-9-82. [AMENDED]
710:45-9-83. [AMENDED]
710:45-9-84. [AMENDED]
Part 19. Production Using Three Dimensional Seismic Shoots
710:45-9-92. [AMENDED]
GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-986; filed 5-22-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME

[OAR Docket #06-987]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 15. Oklahoma taxable income
Part 3. Exemptions
710:50-15-33. [NEW]
Part 5. Other Adjustments to Income
710:50-15-48. [AMENDED]
710:50-15-49. [AMENDED]
710:50-15-50. [AMENDED]
710:50-15-66. [AMENDED]
Part 7. Credits against Tax
710:50-15-76. [AMENDED]
710:50-15-85. [AMENDED]
710:50-15-90. [AMENDED]
710:50-15-92. [AMENDED]
710:50-15-97. [NEW]
710:50-15-98. [NEW]
710:50-15-99. [NEW]
710:50-15-100. [NEW]
710:50-15-101. [NEW]
710:50-15-103 [NEW]
710:50-15-104. [NEW]
710:50-15-105. [NEW]
710:50-15-106. [NEW]
710:50-15-107. [NEW]
Subchapter 17. Oklahoma Taxable Income for Corporations
Part 1. General Provisions
710:50-17-3. [AMENDED]
GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-987; filed 5-22-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 55. MOTOR FUEL

[OAR Docket #06-988]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 4. Motor Fuel Tax
Part 1. Licenses
710:55-4-103. [AMENDED]
GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-988; filed 5-22-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES

[OAR Docket #06-887]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Registration and Licensing
Part 3. Penalties
710:60-3-30. [AMENDED]
710:60-3-32. [AMENDED]
Part 11. Other Vehicles
710:60-3-112. [AMENDED]
Part 14. All Terrain Vehicles and Off-Road Motorcycles [NEW]
710:60-3-140. [NEW]
710:60-3-141. [NEW]
710:60-3-142. [NEW]
Part 15. Special License Plates
710:60-3-150. [AMENDED]
Part 19. Enforcement
710:60-3-210. [REVOKED]
710:60-3-211. [REVOKED]
710:60-3-212. [REVOKED]
710:60-3-213. [REVOKED]
Subchapter 5. Motor Vehicle Titles
Part 5. Certificates of Title
710:60-5-53. [AMENDED]
Part 7. Transfer of Title
710:60-5-71. [AMENDED]
Part 9. Affidavits for Use in Titles
710:60-5-91. [AMENDED]
710:60-5-92. [AMENDED]
Part 11. Liens
710:60-5-116. [AMENDED]
Subchapter 7. Motor Vehicle Excise Tax
710:60-7-3. [AMENDED]
Subchapter 8. Rental Tax on Motor Vehicle Rentals
710:60-8-4. [AMENDED]
Subchapter 9. Motor Vehicle License Agents/Agencies
Part 9. Specific Fiscal Duties
710:60-9-95. [AMENDED]
GUBERNATORIAL APPROVAL:
April 28, 2006

[OAR Docket #06-887; filed 5-10-06]

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

[OAR Docket #06-886]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Reports and Returns; Payments and Penalties; Records
Part 1. General Provisions
710:65-3-4. [AMENDED]
710:65-3-8. [AMENDED]
Subchapter 7. Duties and Liabilities
710:65-7-15. [AMENDED]
710:65-7-17. [NEW]
710:65-7-18. [NEW]
Subchapter 9. Permits
710:65-9-8. [AMENDED]
Subchapter 13. Sales and Use Tax Exemptions
Part 1. Advertising in Media
710:65-13-1. [AMENDED]
Part 12. Aircraft [NEW]
710:65-13-63. [NEW]
Part 23. Gas and Electricity
710:65-13-123. [NEW]
Part 29. Manufacturing
710:65-13-154. [AMENDED]
710:65-13-156. [NEW]
Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities
710:65-13-176. [NEW]
Part 35. Newspapers, Periodicals; Media
710:65-13-194. [AMENDED]
Part 42. Disabled Veterans in Receipt of Compensation at the 100% Rate [NEW]
710:65-13-275. [NEW]
Part 43. Social, Charitable, and Civic Organizations and Activities
710:65-13-339. [AMENDED]
710:65-13-343. [AMENDED]
710:65-13-344. [NEW]
710:65-13-345. [NEW]
710:65-13-346. [NEW]

710:65-13-347. [NEW]
710:65-13-348. [NEW]
Part 45. Modular Dwelling Units [NEW]
710:65-13-450. [NEW]
Subchapter 19. Specific Applications and Examples
Part 7. "D"
710:65-19-74. [AMENDED]
710:65-19-77. [AMENDED]
Part 15. "H"
710:65-19-142. [AMENDED]
Part 23. "L"
710:65-19-195. [NEW]
Part 39. "T"
710:65-19-328. [AMENDED]
710:65-19-330. [AMENDED]
Subchapter 21. Use Tax
710:65-21-7. [AMENDED]

GUBERNATORIAL APPROVAL:
April 28, 2006

[OAR Docket #06-886; filed 5-10-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 70. TOBACCO, TOBACCO PRODUCTS, AND CIGARETTES

[OAR Docket #06-989]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 2. Cigarette Stamp Tax
Part1. General Provisions
710:70-2-9.1. Vehicle cigarette licenses [NEW]
710:70-2-11. Requirements placed on distributors and retailers to maintain copies of invoices [NEW]
710:70-2-12. Limitation on sale of number of packs of cigarettes at a reduced rate [NEW]
Subchapter 5. Excise on Tobacco Products
710:70-5-13. Requirements placed on distributors and retailers to maintain copies of invoices with certain information that must be show on each invoice [NEW]

GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-989; filed 5-22-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 70. TOBACCO, TOBACCO PRODUCTS, AND CIGARETTES

[OAR Docket #06-990]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 2. Cigarette Stamp Tax
Part 1. General Provisions
710:70-2-13. [NEW]

GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-990; filed 5-22-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 85. VARIOUS TAX INCENTIVES

[OAR Docket #06-991]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 7. Oklahoma Film Enhancement Rebate Program
710:85-7-3. [AMENDED]

GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-991; filed 5-22-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 90. WITHHOLDING

[OAR Docket #06-992]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules

RULES:
Subchapter 3. Returns and Payments
710:90-3-4. [AMENDED]
710:90-3-11. [AMENDED]
710:90-3-15. [AMENDED]
710:90-3-17. [AMENDED]

GUBERNATORIAL APPROVAL:
May 15, 2006

[OAR Docket #06-992; filed 5-22-06]

TITLE 735. STATE TREASURER CHAPTER 80. UNCLAIMED PROPERTY

[OAR Docket #06-972]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Reporting Requirements
Part 3. Financial Institutions
735:80-3-11. [NEW]
GUBERNATORIAL APPROVAL:
May 11, 2006

[OAR Docket #06-972; filed 5-18-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 1. ORGANIZATION AND METHOD OF OPERATIONS

[OAR Docket #06-894]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
765:1-1-2.1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-894; filed 5-10-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 2. INFORMAL AND FORMAL PROCEDURES

[OAR Docket #06-895]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Formal Procedures
765:2-3-5.1 [NEW]
765:2-3-6 [AMENDED]
765:2-3-11 [AMENDED]
Subchapter 5. Arbitration
765:2-5-12 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-895; filed 5-10-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 3. PROMULGATION, AMENDMENT, AND REPEAL OF RULES

[OAR Docket #06-896]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
765:3-1-6 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-896; filed 5-10-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 10. USED MOTOR VEHICLE DEALERS

[OAR Docket #06-897]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:10-1-3 [AMENDED]
Subchapter 3. Operation
765:10-3-1 [AMENDED]
765:10-3-3 [AMENDED]
765:10-3-4 [NEW]
765:10-3-5 [NEW]
Subchapter 5. Assessment of Fine or Denial, Suspension, or Revocation of License
765:10-5-1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-897; filed 5-10-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 11. USED MOTOR VEHICLE REBUILDERS

[OAR Docket #06-898]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Authority of a Rebuilder
765:11-3-1 [AMENDED]

Subchapter 5. Assessment of Fine or Denial, Suspension, or Revocation of License
765:11-5-1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-898; filed 5-10-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 15. USED MOTOR VEHICLE ~~SALESMEN~~ SALESPERSONS

[OAR Docket #06-899]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:15-1-1 [AMENDED]
765:15-1-2 [AMENDED]
765:15-1-3 [AMENDED]
765:15-1-4 [AMENDED]
765:15-1-5 [AMENDED]
765:15-1-7 [AMENDED]
Subchapter 3. Authority of ~~Salesmen~~ Salespersons
765:15-3-1 [AMENDED]
Subchapter 5. Assessment of Fine or Denial, Suspension, or Revocation of License
765:15-5-1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-899; filed 5-10-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 16. ADVERTISING

[OAR Docket #06-900]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. General Provisions
765:16-1-2 [AMENDED]
Subchapter 3. Specific Advertising Regulations
765:16-3-7 [AMENDED]
765:16-3-11 [AMENDED]
765:16-3-12 [NEW]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-900; filed 5-10-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 20. WHOLESALE USED MOTOR VEHICLE DEALERS

[OAR Docket #06-901]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:20-1-1 [AMENDED]
765:20-1-2 [AMENDED]
765:20-1-4 [AMENDED]
765:20-1-6 [AMENDED]
Subchapter 3. Operation
765:20-3-2 [AMENDED]
Subchapter 5. Assessment of Fine or Denial, Suspension, or Revocation of License [NEW]
765:20-5-1 [NEW]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-901; filed 5-10-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 25. AUTOMOTIVE DISMANTLER AND PARTS RECYCLERS

[OAR Docket #06-902]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:25-1-3 [AMENDED]
765:25-1-4 [AMENDED]
765:25-1-5 [AMENDED]
765:25-1-6 [AMENDED]
Subchapter 3. Operation
765:25-3-1 [AMENDED]
765:25-3-4 [AMENDED]
Subchapter 5. Assessment of Fine or Denial, Suspension, or Revocation of License
765:25-5-1 [AMENDED]
765:25-5-2 [AMENDED]

GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-902; filed 5-10-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 30. BUYER'S IDENTIFICATION CARDS

[OAR Docket #06-903]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 3. Assessment of Fine or Denial, Suspension, or Revocation of Bid Card
765:30-3-1 [AMENDED]
765:30-3-2 [AMENDED]
Subchapter 7. Salvage Pools and Salvage Disposal Sales
765:30-7-2 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-903; filed 5-10-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 35. MANUFACTURED HOME DEALERS

[OAR Docket #06-904]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 5. Operation
765:35-5-1 [AMENDED]
Subchapter 7. Assessment of Fine or Denial, Suspension, or Revocation of License
765:35-7-1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-904; filed 5-10-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 36. MANUFACTURED HOME MANUFACTURERS

[OAR Docket #06-905]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 7. Assessment of Fine or Denial, Suspension, or Revocation of License
765:36-7-1 [AMENDED]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-905; filed 5-10-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 37. MANUFACTURED HOME INSTALLERS

[OAR Docket #06-906]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 9. Assessment of Fine or Denial, Suspension, or Revocation of License [NEW]
765:37-9-1 [NEW]
765:37-9-2 [NEW]
GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-906; filed 5-10-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 38. MANUFACTURED HOME SALESPERSON

[OAR Docket #06-907]

RULEMAKING ACTION:
Gubernatorial approval of permanent rules
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees [NEW]
765:38-1-1 [NEW]
765:38-1-2 [NEW]
765:38-1-3 [NEW]
765:38-1-4 [NEW]
765:38-1-5 [NEW]
765:38-1-6 [NEW]
Subchapter 3. Authority of Salespersons [NEW]
765:38-3-1 [NEW]
Subchapter 5. Assessment of Fine or Denial, Suspension, or Revocation of License [NEW]
765:38-5-1 [NEW]
765:38-5-2 [NEW]

GUBERNATORIAL APPROVAL:
May 4, 2006

[OAR Docket #06-907; filed 5-10-06]

Withdrawn Rules

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

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

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

TITLE 160. DEPARTMENT OF CONSUMER CREDIT
CHAPTER 25. UNIFORM CONSUMER CREDIT CODE RULES

[OAR Docket #06-924]

RULEMAKING ACTION:
Withdrawal of PERMANENT rulemaking
WITHDRAWN RULES:
160:25-1-4. [NEW]
DATES:
Adoption:
March 27, 2006
Submitted to Governor:
March 31, 2006
Submitted to House:
March 31, 2006
Submitted to Senate:
March 31, 2006
Withdrawn:
May 12, 2006

[OAR Docket #06-924; filed 5-15-06]

TITLE 595. DEPARTMENT OF PUBLIC SAFETY
CHAPTER 25. WRECKERS AND TOWING SERVICES

[OAR Docket #06-982]

RULEMAKING ACTION:
Withdrawal of PERMANENT rulemaking
RULES:
Subchapter 5. All Wrecker Operators
595:25-5-3. Operation [AMENDED]
ADOPTION:
March 28, 2006
SUBMITTED TO GOVERNOR:
March 29, 2006
SUBMITTED TO HOUSE:
March 29, 2006
SUBMITTED TO SENATE:
March 29, 2006
WITHDRAWN:
April 17, 2006

[OAR Docket #06-982; filed 5-22-06]

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 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 35. GENERAL CONDUCT

[OAR Docket #06-1140]

RULEMAKING ACTION:
EMERGENCY adoption
RULE:
325:35-1-5. Trainer responsibility [AMENDED]
AUTHORITY:
75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission
DATES:
Adoption:
March 23, 2006
Approved by Governor:
May 9, 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:
Not Applicable
INCORPORATIONS BY REFERENCE:
Not Applicable
FINDING OF EMERGENCY:
The Oklahoma Horse Racing Commission finds that compelling, extraordinary circumstances necessitate the emergency adoption of rule amendments and new rules to Chapters 35, 40 and 45 of OAC 325 *Rules of Racing*. The reasons for this finding are as follows:

1. In the interest of the public health, safety, and welfare, it is the declared policy of the State of Oklahoma to vest the Oklahoma Horse Racing Commission with authority and plenary power to promulgate rules to forcefully control race meetings held in this State.

2. It is the declared public policy of the State of Oklahoma that such Commission rules shall encourage agriculture and the breeding of horses in this State; maintain race meetings held in this State of the highest quality and free of any horse racing practices which are corrupt, incompetent, dishonest or unprincipled; dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in this State; and generate public revenues.

3. Ad Hoc Committee created by the Oklahoma Horse Racing Commission for the purpose of reviewing and reporting to the Commission equine drug research and testing throughout the country found that Oklahoma's current Medication Equine Testing Procedures do not allow horsemen to effectively use and treat horses with therapeutic medications necessary to preserve the health and welfare of the horse and therefore a compelling, extraordinary circumstance exists for the proposed rule amendments and new rules to be considered for immediate amendment on both an emergency and permanent basis.

4. Under the circumstances as described above, rule amendments and/or new rules are proposed for adoption under emergency rulemaking requirements.

ANALYSIS:
On December 15, 2005, Chairman Calvert of the Oklahoma Horse Racing Commission established an Ad Hoc Committee on Drug Testing Rules to review OAC *Rules of Racing* Title 325, Chapter 40, Veterinarian Practices, and Chapter 45, Medication and Equine Testing Procedures. Chapter 35 was also later reviewed. The Committee, chaired by Commissioner Cassie Barkett, consisted of three (3) Commissioners of the Oklahoma Horse Racing Commission [Commissioners Cassie Barkett, Gene Bledsoe and Jim Bowers], the Executive Director of the Horse Racing Commission [Constantin A. Rieger], one (1) representative of the Oklahoma Quarter Horse Racing Association [Debbie Schauf], one (1) representative of the Thoroughbred Racing Association of Oklahoma [Joe Lucas]. After months of research, consultation with experts in the field, and careful consideration, the Ad Hoc Committee concluded that Oklahoma's current Rules pertaining to Medication and Equine Drug Testing Procedures and Veterinarian Practices are contrary to the rapidly changing science and technology which exists with regard to procedures for effective use of safe and necessary therapeutic medication. This, coupled with the fact that many states throughout the country, including but not limited to surrounding states in the region, have made similar changes to their equine drug testing rules, it is the Ad Hoc Committee's recommendation that the Commission consider at its March 23, 2006 Rescheduled Regular Meeting the adoption of this rules. The Commission then took action to adopt the emergency rule amendments and new rules.
CONTACT PERSON:
Bonnie Morris, (405) 943-6472

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 7.5. O.S., SECTION 253(D):

325:35-1-5. Trainer responsibility

(a) The Trainer is presumed to know the rules of racing and is responsible for the condition, soundness, and eligibility of the horses s/he enters in a race. The Trainer shall conduct his/her business of training racehorses with reasonable care and skill and in a humane manner, and with due regard to the interests of his/her owners and to the safety of employees and agents and of the horses in his/her care. Should the chemical analysis, urine or otherwise, taken from a horse under his/her supervision show the presence of any drug or medication ~~of any kind or substance, whether drug or otherwise, regardless of the time it may have been administered~~ except as otherwise provided for in Chapter 45, it shall be taken as prima facie evidence that the same was administered by or with the knowledge of the Trainer or person or persons under his/her supervision having care or custody of such horse. At the discretion of the Stewards or Commission, the Trainer and all other persons

shown to have had care or custody of such horse may be fined or suspended or both. Under the provisions of this Section, the Trainer is also responsible for any puncture mark on any horse s/he enters in a race, found by the Stewards upon recommendation of the Racing or Official Veterinarian to evidence injection by syringe. If the Trainer cannot be present on race days s/he shall designate an Assistant Trainer. Such designation shall be made prior to time of entry, unless otherwise approved by the Stewards. Failure to fully disclose the actual Trainer of a horse participating in an approved race shall be grounds to disqualify the horse and subject the actual Trainer to possible disciplinary action by the Stewards or the Commission. Designation of an Assistant Trainer shall not relieve the Trainer's absolute responsibility for the conditions and eligibility of the horse, but shall place the Assistant Trainer under such absolute responsibility also. Willful failure on the part of the Trainer to be present at, or refusal to allow the taking of any specimen, or any act or threat to prevent or otherwise interfere therewith shall be cause for disqualification of the horse involved; and the matter shall be referred to the Stewards for further action.

(b) In addition to the responsibilities of (a) of this Section, a Trainer has the following specific responsibilities:

(1) Knowledge of medication rules;

(2) Knowledge of medication status of all horses in his/her care;

(3) Knowledge of Furosemide (Salix) use rules;

(4) To register all horses in his/her care with the Racing Secretary;

(5) To ensure that no injectable substances, hypodermic needles, syringes, or electrical or mechanical device (other than the ordinary whip or approved twitch) which may or can be used for the purpose of stimulating or depressing a horse or affecting its speed at any time are in his/her possession; in the possession of employees; or in automobiles; or in sleeping, storage or stable areas owned by or assigned to that Trainer or Trainer's employees;

(6) Proper entering and eligibility of all horses in his/her care;

(7) Guard horses in his/her care;

(8) Make any declaration or scratch of an entered horse in his/her care;

(9) Bill and account for fees and services rendered on behalf of any horse in his/her care to the appropriate Owner or Owners.

(10) To instruct and determine the training regimen of all horses in his/her care and entered in any race.

(c) No Trainer duty or responsibility, whether listed in (a) or (b) of this Section or not, may be assigned to any person who is ineligible to hold a license or who is under suspension in this or any other racing jurisdiction.

(d) No licensed Trainer shall assume any of the responsibilities described in this Section for a horse not under his/her active care, supervision or custody.

[OAR Docket #06-1140; filed 5-26-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 40. VETERINARIAN PRACTICES

[OAR Docket #06-1141]

RULEMAKING ACTION:
EMERGENCY adoption
RULE:
325:40-1-5. Veterinarian reports [AMENDED]
AUTHORITY:
75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission
DATES:
Adoption:
March 23, 2006
Approved by Governor:
May 9, 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:
Not Applicable
INCORPORATIONS BY REFERENCE:
Not Applicable
FINDING OF EMERGENCY:
The Oklahoma Horse Racing Commission finds that compelling, extraordinary circumstances necessitate the emergency adoption of rule amendments and new rules to Chapters 35, 40 and 45 of OAC 325 *Rules of Racing*. The reasons for this finding are as follows:

1. In the interest of the public health, safety, and welfare, it is the declared policy of the State of Oklahoma to vest the Oklahoma Horse Racing Commission with authority and plenary power to promulgate rules to forcefully control race meetings held in this State.

2. It is the declared public policy of the State of Oklahoma that such Commission rules shall encourage agriculture and the breeding of horses in this State; maintain race meetings held in this State of the highest quality and free of any horse racing practices which are corrupt, incompetent, dishonest or unprincipled; dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in this State; and generate public revenues.

3. Ad Hoc Committee created by the Oklahoma Horse Racing Commission for the purpose of reviewing and reporting to the Commission equine drug research and testing throughout the country found that Oklahoma's current Medication Equine Testing Procedures do not allow horsemen to effectively use and treat horses with therapeutic medications necessary to preserve the health and welfare of the horse and therefore a compelling, extraordinary circumstance exists for the proposed rule amendments and new rules to be considered for immediate amendment on both an emergency and permanent basis.

4. Under the circumstances as described above, rule amendments and/or new rules are proposed for adoption under emergency rulemaking requirements.

ANALYSIS:
On December 15, 2005, Chairman Calvert of the Oklahoma Horse Racing Commission established an Ad Hoc Committee on Drug Testing Rules to review OAC *Rules of Racing* Title 325, Chapter 40, Veterinarian Practices, and Chapter 45, Medication and Equine Testing Procedures. Chapter 35 was also later reviewed. The Committee, chaired by Commissioner Cassie Barkett, consisted of three (3) Commissioners of the Oklahoma Horse Racing Commission [Commissioners Cassie Barkett, Gene Bledsoe and Jim Bowers], the Executive Director of the Horse Racing Commission [Constantin A. Rieger], one (1) representative of the Oklahoma Quarter Horse Racing Association [Debbie Schauf], one (1) representative of the Thoroughbred Racing Association of Oklahoma [Joe Lucas]. After months of research, consultation with experts in the field, and careful consideration, the Ad Hoc Committee concluded that Oklahoma's current Rules pertaining to Medication and Equine Drug Testing Procedures and Veterinarian Practices are contrary to the rapidly changing science and technology which exists with regard to procedures for effective use of safe and necessary therapeutic medication. This, coupled with the fact that many states throughout the country, including

but not limited to surrounding states in the region, have made similar changes to their equine drug testing rules, it is the Ad Hoc Committee's recommendation that the Commission consider at its March 23, 2006 Rescheduled Regular Meeting the adoption of this rules. The Commission then took action to adopt the emergency rule amendments and new rules.

CONTACT PERSON:

Bonnie Morris, (405) 943-6472

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 7.5. O.S., SECTION 253(D):

325:40-1-5. Veterinarian reports

(a) Every Veterinarian licensed by the Commission:

(1) Who treats any horse within the enclosure for any contagious or communicable disease shall immediately report the treatment to the Official Veterinarian in writing on a form approved by the Commission.

(2) Who treats ~~an entered~~ a horse ~~as herein defined~~ within twenty-four (24) hours prior to post-time except as provided in this Chapter (Salix) 45 Rule 325:45-1-20 shall submit daily reports on a form approved by the Commission to the Official Veterinarian showing all medication and other substances which the Veterinarian prescribed, administered or dispensed. ~~For purposes of the provisions of this Chapter, an entered horse is defined as any horse which appears on the overnight sheet and has either drawn a position for a race or is an also eligible from the time that the horse is entered in the race condition or forty eight (48) hours prior to the first post time on the race day in which the horse will race, whichever is less, and until midnight following the race for which the horse is scheduled to race.~~ The form shall include but not be limited to the name and location of the horse treated, the name of the Trainer, the time of treatment or examination, the probable diagnosis, and the medication administered.

(3) Who treats any horse or performs other professional services ~~within the enclosure of an organization licensee during a race meeting~~ to horses eligible to participate participating in any race meeting conducted in Oklahoma shall be responsible for maintaining ~~treatment~~ medical records ~~or a log book~~ in strict compliance with the Oklahoma Veterinary Practice Act, O.S., Title 59, § 698.2 to § 698.28 on all horses for which they prescribe, administer, or dispense medication or perform other professional services. The treatment records or log book information shall include but not be limited to the date and time of treatment/service; name of racetrack; Veterinarian's printed name and signature; registered name of horse; Trainer's name; barn number or location of horse; race date and race number, if any; medication and dosage; and reason for treatment/services. These records shall be available to the Commission and the Stewards ~~upon~~ within twenty-four (24) hours of request unless otherwise provided by the Board of Stewards or Commission Executive Director. Failure to comply shall subject the Veterinarian to disciplinary action by the Board of Stewards.

(b) Any such medical record and any report of treatment as described in (a) of this Section is confidential; and its content shall not be disclosed except in a proceeding before the Stewards or the Commission~~, or~~ in the exercise of the Commission's jurisdiction or forwarding such information to the Oklahoma Board of Veterinarian Medical Examiners.

[OAR Docket #06-1141; filed 5-26-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 45. MEDICATION AND EQUINE TESTING PROCEDURES

[OAR Docket #06-1142]

RULEMAKING ACTION:

EMERGENCY adoption

RULE:

325:45-1-2. Definitions [AMENDED]
325:45-1-4. Drugs or medication [AMENDED]
325:45-1-5. Power to have tested [AMENDED]
325:45-1-6. Authorized Medication [AMENDED}
325:45-1-7. Authority to test sample [AMENDED]
325:45-1-8. Furosemide (Salix) use with detention barn [REVOKED]
325:45-1-9. Furosemide (Salix) use without detention barn [AMENDED]
325:45-1-10. Conditional Furosemide (Salix) use [REVOKED]
325:45-1-11. Trainer responsibility - Furosemide (Salix) [AMENDED]
325:45-1-12. Bleeder List [AMENDED]
325:45-1-13. Racing after bleeding [AMENDED]
325:45-1-15. Equine drug testing laboratory reports [AMENDED]
325:45-1-17. Equipment for official testing [AMENDED]
325:45-1-18. Taking of samples [AMENDED]
325:45-1-19. Laboratories approved and designated by the Commission [AMENDED]
325:45-1-20. Split samples [AMENDED]
325:45-1-22. Phenylbutazone use [AMENDED]
325:45-1-23. Trainer responsibility - Phenylbutazone [AMENDED]
325:45-1-24. Drug classification and penalties [AMENDED]
325:45-1-25. Use, administration and regulation of Furosemide (Salix) [REVOKED]
325:45-1-26. Primary laboratory's request for additional test time [NEW]
325:45-1-27. Prohibited practices [NEW]
325:45-1-28. Report of treatment: Procaine penicillin administration [NEW]
325:45-1-29. Environmental contaminants and substances of human use [NEW]

AUTHORITY:

75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission

DATES:

Adoption:

March 23, 2006

Approved by Governor:

May 9, 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:

Not Applicable

INCORPORATIONS BY REFERENCE:

Not Applicable

FINDING OF EMERGENCY:

The Oklahoma Horse Racing Commission finds that compelling, extraordinary circumstances necessitate the emergency adoption of rule amendments and new rules to Chapters 35, 40 and 45 of OAC 325 *Rules of Racing*. The reasons for this finding are as follows: 1. In the interest of

the public health, safety, and welfare, it is the declared policy of the State of Oklahoma to vest the Oklahoma Horse Racing Commission with authority and plenary power to promulgate rules to forcefully control race meetings held in this State. 2. It is the declared public policy of the State of Oklahoma that such Commission rules shall encourage agriculture and the breeding of horses in this State; maintain race meetings held in this State of the highest quality and free of any horse racing practices which are corrupt, incompetent, dishonest or unprincipled; dissipate any cloud of association with the undesirable and maintain the appearance as well as the fact of complete honesty and integrity of horse racing in this State; and generate public revenues. 3. Ad Hoc Committee created by the Oklahoma Horse Racing Commission for the purpose of reviewing and reporting to the Commission equine drug research and testing throughout the country found that Oklahoma's current Medication Equine Testing Procedures do not allow horsemen to effectively use and treat horses with therapeutic medications necessary to preserve the health and welfare of the horse **and therefore a compelling, extraordinary circumstance exists for the proposed rule amendments and new rules to be considered for immediate amendment on both an emergency and permanent basis.**4. Under the circumstances as described above, rule amendments and/or new rules are proposed for adoption under emergency rulemaking requirements.

ANALYSIS:

On December 15, 2005, Chairman Calvert of the Oklahoma Horse Racing Commission established an Ad Hoc Committee on Drug Testing Rules to review OAC *Rules of Racing* Title 325, Chapter 40, Veterinarian Practices, and Chapter 45, Medication and Equine Testing Procedures. Chapter 35 was also later reviewed. The Committee, chaired by Commissioner Cassie Barkett, consisted of three (3) Commissioners of the Oklahoma Horse Racing Commission [Commissioners Cassie Barkett, Gene Bledsoe and Jim Bowers], the Executive Director of the Horse Racing Commission [Constantin A. Rieger], one (1) representative of the Oklahoma Quarter Horse Racing Association [Debbie Schauf], one (1) representative of the Thoroughbred Racing Association of Oklahoma [Joe Lucas]. After months of research, consultation with experts in the field, and careful consideration, the Ad Hoc Committee concluded that Oklahoma's current Rules pertaining to Medication and Equine Drug Testing Procedures and Veterinarian Practices are contrary to the rapidly changing science and technology which exists with regard to procedures for effective use of safe and necessary therapeutic medication. This, coupled with the fact that many states throughout the country, including but not limited to surrounding states in the region, have made similar changes to their equine drug testing rules, it is the Ad Hoc Committee's recommendation that the Commission consider at its March 23, 2006 Rescheduled Regular Meeting the adoption of this rules. The Commission then took action to adopt the emergency rule amendments and new rules.

CONTACT PERSON:

Bonnie Morris, (405) 943-6472

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 7.5. O.S., SECTION 253(D):

325:45-1-2. Definitions

In addition to the definitions provided in Section 200.1 of Title 3A, of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Horse Racing Act [3A:200 et seq.]

"Assistant trainer" means a person qualified and licensed by the Commission as an Assistant Trainer.

"Authorized agent" means a person licensed by the Commission and appointed by a written notarized affidavit by the Owner in whose behalf the Agent will act. Said affidavit must be on file with the Commission.

"Bleeder" means a horse which during or following exercise or the race is observed to be shedding blood from one or both nostrils, or the mouth, or hemorrhaging in the lumen of the respiratory tract.

"Bleeder list" means a tabulation of all bleeders which tabulation shall be maintained by the Commission.

~~**"Clear and convincing evidence"** means that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of allegations sought to be established.~~

"Commission-Sanctioned Thresholds" mean threshold levels identified pursuant to a directive promulgated by the Commission as authorized by Oklahoma Statute Title 3A, Section 205.2(H) based upon scientific research and industry established standards which studies have shown have no pharmacological effect on the performance of the horse. Said directive shall be conspicuously posted within the enclosure by the Official Veterinarian.

"Commissioner" means a member of the Oklahoma Horse Racing Commission.

"Conditions of a race" means the qualifications which determine the eligibility of a horse to be entered in a race.

"Controlled substance" means any substance included in the five classification schedules of the Oklahoma Uniform Controlled Dangerous Substances Act.

"Day" means a 24-hour period ending beginning at midnight.

"Drug (medication)" means a substance foreign to the normal physiology of the horse.

"Foreign substances" means all substances except those which exist naturally in the untreated horse at normal physiological concentration and shall include but not be limited to all narcotics, stimulants, or depressants.

"Horse" means:

(A) any equine including and designated as mare, filly, stallion, colt, ridgeling, or gelding registered for racing;

(B) an entire equine male five years of age and older.

"Medication" means a substance other than food intended to affect the structure or any function of the body of a human or a horse.

"Occupation license" means a state requirement for any person acting in any capacity pursuant to provisions of the Act.

"Official Veterinarian" means a person qualified and licensed by the Commission as Official Veterinarian.

"Organization license" means a state requirement for any person desiring to conduct a race meeting in Oklahoma within the minimum standards as required by the Act and the rules of the Commission.

"Owner" means any person who holds in whole or in part, any right, title or interest in a horse or an organization licensee or any person who is a lessee of a horse and has been duly issued a currently-valid Owner license as a person responsible for such horse.

"Prima Facie evidence" means evidence that, until its effect is overcome by another evidence, will suffice as proof of fact in issue.

~~**"Preponderance of evidence"** means greater weight of evidence, or evidence which is more credible.~~

"Primary Laboratory" means the laboratory approved by the Commission to be used for analysis of urine, blood or other specimens.

"Program" means the published listing of all contests and contestants for a specific performance.

"Race" means a contest between horses.

"Race day" means a day during a race meeting when pari-mutuel wagering occurs on live races conducted at that racetrack.

"Racing Veterinarian" means a person qualified and licensed by the Commission as Racing Veterinarian.

"Referee Laboratory" means a Commission-approved laboratory which accepts referee/split samples previously reported positive for prohibited substances or drugs by the Primary Laboratory.

"Restricted area" means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to the barn area, paddock, test barn, Stewards' tower, racecourse, mutuel line and money rooms, or any other area designated restricted by the organization licensee or the Commission, or both. Signs giving notice of restricted access shall be prominently displayed at all entry points.

"Rules" means the rules adopted by the Commission to implement the provisions of the Act.

"Salix list" means a tabulation of all horses which are authorized by the Official Veterinarian for race day use of Salix (furosemide).

"Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Substantial evidence" means evidence which a ~~reasoning mind~~ reasonable person would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be ~~somewhat~~ less than a preponderance of the evidence.

"Trainer" means a person qualified and licensed by the Commission as a Trainer.

"Veterinarian" means a person licensed to practice veterinary medicine by the State of Oklahoma and licensed as a veterinarian by the Commission.

"Week" means a ~~calendar week~~ seven (7) day period.

"Year" means a ~~calendar year~~ a 365 day period.

325:45-1-4. Drugs or medication

Except as authorized by the provisions of this Chapter and Chapter 40 of this Title, no drug or medication shall be administered to any horse ~~prior to or during any race~~ within 24 hours of a race in which a horse is entered. Presence of any drug or its metabolites or analogs, any substance foreign to the natural horse, or Furosemide (Salix) or Phenylbutazone exceeding the Commission-established tolerance level found in the testing sample of a horse participating in a Commission-sanctioned race may result in disqualification by the Stewards. When a horse is disqualified because of an infraction of this Section, except as provided in 325:45-1-9 and in 325:45-1-22, the Owner or Owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned.

325:45-1-5. Power to have tested

As a safeguard against the prohibited use of drugs, medication, and substances foreign to the natural horse, and against the use of Furosemide (Salix) or Phenylbutazone in excess of the Commission-approved tolerance level, a blood, urine or other acceptable sample shall be taken under the direction of the Official Veterinarian from the winner of every race and from such other horses as the Stewards or the Commission may designate [3A:208.11]. The costs of quantitative testing ~~for Furosemide (Salix) and Phenylbutazone~~ shall be the responsibility of the horse Owner.

325:45-1-6. Authorized medication

~~As authorized under the provisions of 3A O.S., §208.11, Furosemide (Salix) and Phenylbutazone are medications or drug substances that may be administered to a horse (treated horse), as prescribed in this Chapter, which is entered to compete in a race. Within limits established by the Commission, Furosemide (Salix), Phenylbutazone, their metabolites or analogs are the only substances foreign to the normal physiology of the horse which may be present in a blood or urine test sample from a horse designated to have received a pre-race administration of Furosemide (Salix) or Phenylbutazone. Except under the instructions of the Official Veterinarian or Racing Veterinarian for the purpose of removing a horse from the Veterinarian's List or to facilitate the collection of a post-race urine sample, Furosemide (Salix) shall be permitted only after the Official Veterinarian has placed the horse on the Bleeder list and under the conditions as specified in 325:45-1-8, 325:45-1-9, and 325:45-1-10.~~

(a) The Commission recognizes that therapeutic medications are necessary to preserve the health and welfare of horses and that horses in training, like all other athletes, may at times require the administration of certain therapeutic medications to preserve their health.

(b) As authorized under the provisions of 3A O.S., § 208.11, Furosemide (Salix) and Phenylbutazone are medications or drug substances that may be administered to a horse (treated horse), as prescribed in this Chapter, which is entered to compete in a race.

(c) Except as otherwise authorized by the Commission, a horse participating in a race shall not carry in its body any drug, medication, substance, or metabolic derivative that:

(1) is a narcotic;

(2) could serve as an anesthetic or tranquilizer; or

(3) could stimulate, depress, or affect the circulation, respiratory, cardiovascular, musculoskeletal or central nervous system of a horse;

(d) A medication, drug, substance, or metabolic derivative thereof that might mask or screen the presence of prohibited drugs, or prevent or delay testing procedures shall be prohibited.

(e) Therapeutic medications in excess of Commission-Sanctioned Threshold levels established by Commission Directive [3A:205.2(H)]. Said directive shall be conspicuously posted within the enclosure by the Official Veterinarian.

(f) Substances present in a horse in excess of concentrations at which substances could occur naturally shall be prohibited.

(g) It shall be prima facie evidence that a horse had been administered and carried a drug, medication, substance, or metabolic derivative thereof, prohibited by this Section while running a race if:

(1) a saliva, urine, blood or other sample or specimen from the horse was taken pursuant to Rule 325:45-1-16 in this Chapter; and

(2) the Primary Laboratory detected a drug, medication, substance, or metabolic derivative thereof, prohibited by or in excess of Commission-Sanctioned Threshold levels established by Commission Directive [3A:205.2(H)]. Said directive shall be conspicuously posted within the enclosure by the Official Veterinarian. The Affidavit submitted by the Primary Laboratory shall be supported by urine and.or plasma/serum results.

325:45-1-7. Authority to test sample

Prior to or following a race, a horse may be subjected to having a blood and/or ~~urine sample~~ serum or other specimen taken at the direction of the Official Veterinarian to determine quantitative Furosemide (Salix) and Phenylbutazone levels and/or the presence of other drugs which may be contained in the blood, ~~or~~ urine or other specimen sample. [3A:204(A)(14); see also 3A:204.1B and 3A:208.11] It shall not be a violation of this Chapter unless the Primary Laboratory confirms the presence of therapeutic medications by plasma/serum results above the Commission-sanctioned levels.

325:45-1-8. Furosemide (Salix) use with detention barn [REVOKED]

~~The use of Furosemide (Salix) shall be permitted under the following circumstances:~~

~~(1) Furosemide (Salix) shall be administered at the direction of the Official Veterinarian or his/her designee no less than four hours prior to post time of the race for which the horse is entered.~~

~~(2) A horse qualified for a Furosemide (Salix) administration must report to the Detention Barn within time to comply with the four hour administration requirement, as specified in (1) of this Section.~~

~~(3) The dose administered shall not exceed 250 mg. nor may be less than 150 mg.~~

~~(4) Administration must be controlled by using sealed vials and sterile disposable syringes and needles. Multiple dose vials shall be preserved in safekeeping by the Official Veterinarian for the practitioners between administrations.~~

~~(5) After treatment, the horse shall be required by the Commission to remain in the Detention Barn in the care, custody, and control of the Trainer or his/her designated representative under track and/or Commission security supervision until called to the saddling paddock.~~

~~(6) All costs incurred with the administration, injection, and blood and/or urine testing of or for Furosemide (Salix) shall be at the expense of the horse Owner.~~

~~(7) Such other conditions as may be approved by the Commission from time to time, which conditions shall be posted at the office of the Official Veterinarian.~~

325:45-1-9. Furosemide (Salix) use without detention barn

The use of Furosemide (Salix) shall be permitted under the following conditions:

(1) The dose shall be administrated intravenously.

(~~1~~2) The Commission has established a post race plasma concentration level not to exceed ~~50~~ 100 ng/ml of Furosemide (Salix).

(~~2~~3) Any treated horse which finished first, second or third shall be subject to having a blood and/or urine sample taken at the direction of the Official Veterinarian to determine the quantitative Furosemide (Salix) levels and/or the presence of other drugs which may be present in the blood or urine sample. The cost of such testing shall be at the expense of the Owner.

(~~3~~4) The permitted quantitative Furosemide (Salix) level (tolerance level) shall not exceed the tolerance level established by Commission directive [3A:205.2(H)]. Said directive shall be conspicuously posted within the enclosure by the Official Veterinarian.

(~~4~~5) The Stewards shall impose a fine of ~~Two Hundred Fifty~~ Five Hundred Dollars (~~$250.00~~ $500.00) for any Trainer ~~for~~ in violation ~~of paragraph (3)~~ of this Section for a first time offense. For a second time offense involving the same horse in a one (1) year period for violation ~~of paragraph (3)~~ of this Section, the Stewards shall impose a fine of ~~Two Hundred Fifty~~ One Thousand Dollars (~~$250.00~~ $1,000.00) ~~if it is a different horse; and if the second time offense is on the same horse, the Stewards shall impose a fine of One Thousand Dollars ($1,000.00)~~ unless the Trainer was not notified of the first offense prior to the horse running the second time, in which case the Stewards shall impose a fine of Five Hundred Dollars ($500.00). The Stewards shall impose a fine of Two Thousand Five Hundred Dollars ($2,500.00) and may suspend for up to one year the license of any person for a third time violation within a one (1) year period ~~of paragraph (3)~~ of this Section involving the same horse. When a Trainer has a third violation ~~involving the same horse~~ within a one (1) year period, the horse shall be disqualified and the Owner or Owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned unless the Trainer was not notified of the second offense prior to the horse running the third time, in which case the Stewards shall impose a fine of ~~One~~ Two Thousand, Five Hundred Dollars (~~$1,000.00~~ $2,500.00).

~~(5) Any subsequent violation of paragraph (3) of this Section by any person shall be referred, with recommendation from the Stewards, to the Commission for disciplinary action.~~

325:45-1-10. Conditional Furosemide (Salix) use [REVOKED]

~~An organization licensee shall have the authority to restrict the use of Furosemide (Salix), subject to Commission approval, in any race, category of racing, or race meeting. Any such proposed restriction shall be included in the organization~~

~~licensee's application for license or application for race days and condition book.~~

325:45-1-11. Trainer responsibility - Furosemide (Salix)

(a) Should the chemical analysis of the urine, blood, ~~or~~ other sample or specimen taken from a horse under the Trainer's supervision show that the drug Furosemide (Salix) is present in an amount exceeding the Commission-approved tolerance level, it shall be taken as prima facie evidence that the same was administered by or with the knowledge of the Trainer or person or persons under his/her supervision having care or custody of such horse. At the discretion of the Stewards or Commission, the Trainer and all other persons shown to have had care or custody of such horse may be fined or suspended or both in accordance with this Chapter. If the Trainer cannot be present on race days, s/he shall designate an Assistant Trainer. Such designation shall be made prior to time of entry unless otherwise approved by the Stewards. Failure to fully disclose the actual Trainer of a horse participating in an approved race shall be grounds to disqualify the horse and subject the actual Trainer to possible disciplinary action by the Stewards or the Commission. Designation of an Assistant Trainer shall not relieve the Trainer's absolute responsibility for the conditions and eligibility of the horse but shall place the Assistant Trainer under absolute responsibility also. Willful failure on the part of the Trainer to be present at, or refusal to allow the taking of any specimen, or any act or threat to prevent or otherwise interfere therewith shall be cause for disqualification of the horse involved; and the matter shall be referred by the Official Veterinarian to the Stewards for further action.

(b) **Failure to detect a reported permitted medication.** A horse that is an official Salix user pursuant to this Chapter that does not show a detectable concentration of Furosemide (Salix) in the post race plasma or serum sample shall be in violation of this Section. The Trainers of the horse which fails to show a detectable level of Furosemide (Salix) shall be fined Five Hundred Dollars ($500.00). Veterinarians shall also be subject to a Five Hundred ($500.00) fine should the Stewards determine that there was negligence on his/her part.

325:45-1-12. ~~Bleeder List~~ Bleeder and Furosemide (Salix) user list

~~Furosemide (Salix) shall be administered for the control of bleeding to an entered horse on the Bleeder List. A horse may be placed on the Bleeder List under the following conditions:~~

The Official Veterinarian at each race meeting shall maintain on a current Bleeder and Furosemide (Salix) User List (hereinafter referred to as the "List") a list of horses classified as known bleeders or Salix users. The Official Veterinarian shall make the list available to racing officials at other racetracks operating in Oklahoma. Once a horse is a known bleeder, the Official Veterinarian shall record and initial on the foal certificate of the horse.

(1) Furosemide (Salix) User:

(A) A horse shall be placed on the List if administered Salix prior to a race. Furosemide (Salix) may be administered to a horse that is entered to compete in a race. It is recommended that the dosage not exceed two hundred fifty (250) milligrams or be less than one hundred (150) milligrams. The dosage is recommended to be administered not less than four (4) hours prior to post time.

(B) A horse whose most recent past performance line indicates the horse has been participating on Furosemide (Salix) may be allowed to continue to use Salix. No Bleeder Certificate shall be issued.

(2) Bleeder: A horse shall be a known bleeder and be placed on the List under the following conditions:

(~~1~~A) When such horse demonstrates visible external evidence of exercise-induced pulmonary hemorrhage or the existence of hemorrhage in the trachea post-exercise upon endoscopic examination, and such hemorrhage is sufficient to impair the ability of the horse to race safely. Such examination must be performed by an Oklahoma Horse Racing Commission-licensed veterinarian practicing within the enclosure, providing the bleeding occurred at a licensed Oklahoma Horse Racing Commission racetrack. The Racing or Official Veterinarian may be present during the examination.

(~~2~~B) A horse with a Bleeder Certificate from another jurisdiction which employs bleeder qualification criteria deemed satisfactory to the Commission, as specified in (1) of this Section, and such horse is approved to participate by the Official Veterinarian. Once a horse is placed on the Bleeder List, the Owner will receive a Bleeder Certificate signed by the practicing veterinarian and the Official Veterinarian. A horse shall be removed from the Salix List only by the Official Veterinarian, who shall provide written notification to the Stewards of the reason for removal.

~~(3) A horse whose most recent past performance line indicates the horse has been participating on Furosemide (Salix) may be allowed to continue to use Salix. No Bleeder Certificate shall be issued.~~

325:45-1-13. Racing after bleeding

(a) A horse that is a known bleeder shall not be eligible to race for a period of not less than ten (10) days after it is placed on the Bleeder and Furosemide (Salix) User List, except as otherwise determined by the Official Veterinarian, and has been approved by the Racing Veterinarian or Official Veterinarian.

(b) A horse that has a second occurrence of bleeding within 365 days of the first bleeding occurrence shall not be eligible to race for thirty (30) days from the date of such bleeding occurrence.

(c) A horse that has a third occurrence of bleeding within 365 days of the first bleeding occurrence shall not be eligible to race in this jurisdiction for ninety (90) days from the date of such bleeding occurrence.

(d) Should a horse experience more than three occurrences of bleeding in a 365 day period, it shall not be eligible to race in this jurisdiction for 365 days from the date of any subsequent bleeding occurrence.

325:45-1-15. Equine drug testing laboratory reports

A finding by a chemist at a Commission-approved equine drug testing laboratory that a test sample taken from a horse contains a drug or its metabolites or analogs, or any substance foreign to the natural horse ~~or Furosemide (Salix) or Phenylbutazone~~ in excess of the ~~Commission-approved tolerance level~~ Commission-Sanctioned Threshold shall be prima facie evidence that such has been administered to the horse either internally or externally in violation of these rules. It is presumed that the sample of urine, blood or other acceptable specimen tested by the approved laboratory to which it is sent is taken from the horse in question; its integrity is preserved; that all accompanying procedures of collection, preservation, transfer to the laboratory, and analyses of the sample are correct and accurate; and that the report received from the laboratory pertains to the sample taken from the horse in question and correctly reflects the condition of the horse during the race in which it was entered, with the burden on the Trainer, Assistant Trainer and/or other responsible person to prove otherwise at any hearing in regard to the matter conducted by the Stewards or the Commission.

325:45-1-17. ~~Equipment~~ Requirements for official testing

Organization~~s~~ Licensees shall provide the equipment, necessary supplies and services prescribed by the Commission and the Official Veterinarian for the taking of or administration of blood, urine, or other tests.

325:45-1-18. Taking of samples

Pursuant to the provisions of 3A:204(A)(14):

~~(1) Blood, urine, or other samples shall be taken under the direction of the Offiical Veterinarian or persons appointed or assigned by the Official Veterinarian for such purposes.~~

(1) Blood shall be taken only by the Official Veterinarian.

(2) Urine, other samples or specimens shall be taken under the direction of the Official Veterinarian or persons appointed or assigned by the Official Veterinarian for such purposes. All samples shall be taken in a detention area approved by the Commission, unless the Official Veterinarian approves otherwise. Each horse shall be cooled out for a minimum of thirty (30) minutes after the race before a urine sample is to be taken. The taking of any test samples shall be witnessed, confirmed or acknowledged by the Trainer of the horse being tested or his/her authorized representative or employee, and may be witnessed by the Owner, Trainer, or other licensed person designated by them. Such samples shall be sent to racing laboratories approved and designated by the Commission, in such manner as the Commission or its designee may direct. All required samples shall be in the custody of the Official Veterinarian, his/her assistants, or other persons approved by the Official Veterinarian from the time they are taken until they are delivered for shipment to the testing laboratory. Except for 1) the decanting of the sample by the Official Veterinarian or other person authorized by the Official Veterinarian to do so, 2) for the addition of preservatives or substances necessarily added by the Commission-approved laboratory for preservation of the sample, and 3) or in the process of analysis, no person shall break the seal of, remove, or otherwise attempt to alter any sample required to be collected by this Chapter.

(~~2~~3) The Commission has the authority to direct the approved laboratory to retain and preserve samples for future analysis.

(~~3~~4) The fact that purse money has been distributed shall not be deemed a finding that no chemical substance has been administered in violation of the provisions of this Chapter to the horse earning such purse money.

(~~4~~5) The decanting of a blood sample -- at the Trainer's/Owner's option -- may be witnessed by the Trainer/Owner of the horse being tested or by his/her authorized representative or employee or other licensed person designated by the Trainer/Owner. The Trainer/Owner exercises his/her option to witness the decanting of a blood sample by making himself/herself or authorized representative or employee or other licensed person designated by the Trainer/Owner present at the time of the decanting of the blood sample. If not present at the time of decanting, the Trainer/Owner or authorized representative or employee or other licensed person designated by the Trainer/Owner ~~shall have no~~ waives the right to witness the decanting process.

325:45-1-19. Laboratories approved and designated by the Commission

(a) Only laboratories approved by the Commission may be used in obtaining analysis reports on urine, blood, or other specimens, taken from the winners or other designated horses of each race meeting. The Commission and the Board of s~~S~~tewards shall receive reports directly from the laboratory. [3A:204(A)(14)]

(b) The Commission shall publish a list of approved Referee Laboratories which must be able to demonstrate competency for that drug or substance reported by the Primary Laboratory, at the limit of detection (LOD) applied by the Primary Laboratory, from which an Owner/Trainer shall select one.

325:45-1-20. Split samples

~~As determined by the Official Veterinarian, when sample quantity permits, each test sample shall be divided into two (2) portions so that one (1) portion shall be used for the initial testing for substances in the sample. If the Trainer or Owner so requests in writing to the Stewards within forty-eight (48) hours of notice of a positive lab report on the test sample of his/her horse, the second portion shall be sent for further testing to a drug testing laboratory approved and designated by the Commission. Nothing in this Section shall prevent the Commission or Executive Director from ordering first use of both sample portions for testing purposes. The results of said split sampling may not prevent the disqualification of the horse pursuant to the provisions of 325:45-1-15 and 325:45-1-4. All~~

~~costs for the transportation and testing of the second sample portion shall be the financial responsibility of the requesting person, and payment shall be due from the requesting person within thirty (30) days of receipt of notice of the costs. The Official Veterinarian shall have overall responsibility for the freezing, storage, and safeguarding of the second sample portion.~~

As determined by the Official Veterinarian, when sample quantity permits, each test sample shall be divided into two (2) portions so that one (1) portion shall be used for the initial testing for substances in the sample. Urine and blood samples shall be collected unless otherwise provided by rule. Both the Trainer and Owner shall be notified in writing of positive lab report of the horse. If the duly notified Trainer and/or Owner so requests in writing to the Stewards within forty-eight (48) hours of notice of a positive lab report on the test sample of his/her horse, the ~~second portion~~ split sample shall be sent for further testing to a drug testing laboratory approved ~~and designated~~ by the Commission. Nothing in this Section shall prevent the Commission or Executive Director from ordering first use of both sample portions for testing purposes. The results of said split sampling may not prevent the disqualification of the horse pursuant to the provisions of 325:45-1-15 and 325:45-1-4. All costs for the transportation, shipment and testing of the ~~second~~ split sample ~~portion~~ shall be the financial responsibility of the requesting person, and payment shall be ~~due from~~ paid by the requesting person through the Horsemen's Bookkeeper or otherwise ~~within thirty (30) days of receipt of notice of the costs~~ at the time of packaging. The Official Veterinarian shall have overall responsibility for the freezing, storage, and safeguarding of the ~~second~~ **split** sample ~~portion~~. Failure of an Owner and/or Trainer to make a written request of the Stewards for split sample testing within 48 hours or failure to make payment as required by this rule constitutes a waiver of any and all rights to have the split sample tested. If the split sample is not confirmed as positive, the Owner or Trainer will be reimbursed the cost of testing by the Commission.

325:45-1-22. Phenylbutazone use

The use of Phenylbutazone shall be permitted under the following conditions:

(1) Any horse to which Phenylbutazone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the Official Veterinarian to determine the quantitative Phenylbutazone level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s). The cost of such testing shall be at the expense of the horse Owner.

(2) The permitted quantitative test level of Phenylbutazone shall not exceed 5 micrograms (ug) per milliliter (ml) of plasma.

(3) The Stewards shall impose a fine of ~~Two Hundred Fifty~~ Five Hundred Dollars (~~$250.00~~ $500.00) for violation of paragraph (2) of this Section if the result of quantitative testing exceeds 5 micrograms (~~mcg~~ ug) per milliliter (ml) of plasma but not greater than 9 10 micrograms (~~mcg~~ ug) per milliliter (ml) of plasma. In the event any Trainer violates paragraph 2 of this Section not exceeding 10 micrograms per milliliter of plasma five (5) or more times within a one (1) year period, that Trainer shall be subject to a One Thousand Dollar ($1,000.00) fine. If the result~~s~~ of quantitative testing of the sample(s) exceed ~~9~~ 10 micrograms (~~mcg~~ ug) per milliliter (ml) of plasma, the Stewards shall impose a fine of ~~Two Hundred Fifty~~ One Thousand Dollars (~~$250.00~~ $1,000.00); and the Owner or Owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned. For a second-time offense for violation of ~~the~~ greater than ~~9~~ 10 micrograms (~~mcg~~ ug) per milliliter (ml) of plasma, the Stewards shall impose a fine of ~~Five Hundred~~ Two Thousand, Five Hundred Dollars (~~$500.00~~ $2,500.00); and the Owner or Owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned; and if the second-time offense is on the same horse within a one (1) year period, the Stewards shall impose a fine of ~~One Thousand~~ Two Thousand, Five Hundred Dollars (~~$1,000.00~~ $2,500.00) and ~~shall~~ may suspend the Trainer for up to thirty (30) days; and the Owner or Owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned. Penalties for third time and subsequent violations on the same horse shall be assessed by the Stewards to include fines not to exceed Two Thousand Five Hundred Dollars ($2,500.00) per person per violation, suspension of a license for up to one year, revocation of a license, ordering that a person be ineligible to hold a license, referral of the matter to the Commission with or without recommendation, or any combination of these assessments.

(4) If within one (1) year, any Licensee violates paragraph 3 of this Section by exceeding 10 ug/ml of plasma five (5) times or more, the Stewards shall refer that Licensee to the Commission for disciplinary action.

325:45-1-23. Trainer responsibility - Phenylbutazone

Should the chemical analysis of the urine, blood, ~~or~~ other sample or specimen taken from a horse under the Trainer's supervision show that the drug Phenylbutazone is present in an amount exceeding the Commission-approved tolerance levels, it shall be taken as prima facie evidence that the same was administered by or with the knowledge of the Trainer or person or persons under his/her supervision having care or custody of such horse. At the discretion of the Stewards or Commission, the Trainer and all other persons shown to have had care or custody of such horse may be fined or suspended or both in accordance with this Chapter. If the Trainer cannot be present on race days, s/he shall designate an Assistant Trainer. Such designation shall be made prior to time of entry unless otherwise approved by the Stewards. Failure to fully disclose the actual Trainer of a horse participating in an approved race shall be grounds to disqualify the horse and subject the actual Trainer to possible disciplinary action by the Stewards or the Commission. Designation of an Assistant Trainer shall not relieve the Trainer's absolute responsibility for the conditions and eligibility of the horse but shall place the Assistant Trainer

under absolute responsibility also. Willful failure on the part of the Trainer to be present at, or refusal to allow the taking of any specimen, or any act or threat to prevent or otherwise interfere therewith shall be cause for disqualification of the horse involved; and the matter shall be referred by the Official Veterinarian to the Stewards for further action.

325:45-1-24. Drug classification and penalties

Upon a finding of a violation of any medication or prohibited substances rule in this Chapter, the Stewards shall consider the classification level of the violation as currently established by the UNIFORM CLASSIFICATION GUIDELINES OF FOREIGN SUBSTANCES as promulgated by the Association of Racing Commissioners International, Inc. and may impose penalties and disciplinary measures consistent with the recommendations contained therein, except not to conflict with the mandates of 325:45-1-9 and 325:45-1-22. Provided, however, that in the event a majority of the Stewards determine that mitigating circumstances require imposition of a lesser penalty, they may impose the lesser penalty. In the event a majority of the Stewards wish to impose a greater penalty or a penalty in excess of the authority granted them, then, and in such event, they may impose the maximum penalty authorized and refer the matter to the Commission with specific recommendations for further action.

325:45-1-25. Use, administration and regulation of Furosemide (Salix) [REVOKED]

~~Not withstanding any rule already in place, all horses participating in a horse race may be administered Furosemide (Salix) prior to a horse race. The dosage shall not exceed two hundred fifty (250) milligrams or be less than one hundred fifty (150) milligrams. The dosage shall be administered not less than four (4) hours prior to post time.~~

325:45-1-26. Primary laboratory's request for additional test time

In the event that the Primary Laboratory's official chemist should find a specimen sample suspicious of a prohibited substance or medication, he/she may request in writing additional time not exceeding ten (10) business days for test analysis and/or confirmation. The Owner/Trainer shall be notified in writing in the event that additional time is granted.

325:45-1-27. Prohibited practices

In addition to other prohibitions set forth in this administrative regulation, the following shall be prohibited at a location under the jurisdiction of the Commission:

(1) The possession and use of a drug, medication or substance (a) which may endanger the health and welfare of the horse or (b) the use of which may endanger the safety of the rider.

(2) The possession or use of a drug, medication or substance that has not been approved by the United States Food and Drug Administration (FDA) for use in humans or animals.

(3) The possession or use of the following agents at a location under the jurisdiction of the Commission:

(A) Erythropoietin;

(B) Darbepoietin;

(C) Oxyglobin;

(D) Hemopure; or

(E) Any substance that abnormally enhances the oxygenation of body tissue.

(4) The practice, administration or application of a treatment, procedure or therapy which may (a) endanger the health or welfare of a horse or (b) endanger the safety of a rider.

(5) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines shall not be permitted unless the following conditions are met:

(A) Any treated horse shall not be permitted to race for a minimum of ten (10) days following treatment.

(B) The use of Extracorporeal Shock Wave Therapy machines shall be limited to Commission-Licensed veterinarians only.

(C) Extracorporeal Shock Wave Therapy machines which are within the enclosure shall be registered with and approved by the Commission.

(D) Any treatments administered shall be reported to the Official Veterinarian by the Trainer and/or veterinarian no later than twenty-four (24) hours post administration.

(6) The administration within 24 hours of a race of an alkalizing substance that could alter the serum or plasma pH or concentration of bicarbonates or total dissolved carbon dioxide in a horse.

(7) Possession or use of a blood gas machine by other than an authorized representative of the Commission at a location under the jurisdiction of the Commission.

325:45-1-28. Report of treatment: Procaine penicillin administration

The efficacious nature of Procaine Penicillin shall permit its use as a therapeutic medication. A licensed veterinarian shall submit, prior to post time of the first race on the day of the race, a report to the Official Veterinarian that the horse participating on that day's race card has been previously treated with a Procaine Penicillin administration. The report must contain the Procaine Penicillin administration, treatment dates, dosage, name and tattoo number of the horse, Trainer's name and race date. The presence of Procaine Penicillin in the post race sample of a participating horse is permitted under the following conditions:

(1) Report of treatment is properly filed with the Official Veterinarian.

(2) The treated horse is presented, prior to the first race, to the Official Veterinarian in order to draw an adequate blood sample for testing.

(3) The pre-race blood/serum sample shall be tested and compared to the post-race blood/serum sample. The pre-race sample shall not exceed the Commission-sanctioned levels for thresholds. Should the pre-race sample levels be reported by the official testing laboratory as equal

to or greater than the post-race levels, there shall be no positive affidavit filed by the laboratory.

(4) Should the post-race sample levels exceed the pre-race levels by an amount not sanctioned by the Commission, the sample shall be treated as being in violation of the rules of this Chapter. A positive affidavit will be issued by the laboratory. The Stewards may use mitigating factors in their decision to impose disciplinary action against the Trainer, horse or other parties found to have been in violation of this Chapter. The cost of pre-race testing shall be the responsibility of the Owner of the treated horse.

325:45-1-29. Environmental contaminants and substances of human use

(a) The Commission recognizes that environmental contaminants are endogenous to the horse or they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination during the cultivation processing treatment, storage or transportation phases.

(b) The following drugs are recognized as substances of human use and addiction and which could be found in the horse due to its close association with humans; included but are not limited to:

(1) caffeine
(2) cocaine
(3) morphine
(4) lidocaine
(5) strychnine
(6) atropine

(c) Any sample found to be over the Commission-Sanctioned Thresholds shall be treated as a positive; however, if substantial evidence presented in a Hearing pursuant to Rule 325:45-1-26 shows that a positive test is the result of environmental contamination or inadvertent exposure due to human drug use, it should be considered as a mitigating factor in any disciplinary action taken against the affected Trainer.

[OAR Docket #06-1142; filed 5-26-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 80. GAMING LICENSING REQUIREMENTS

[OAR Docket #06-1143]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 1. General Provisions [NEW]
Subchapter 3. Gaming License Classifications [NEW]
Subchapter 5. Gaming Licenses and Applications [NEW]
Subchapter 7. Requirements for Racetrack Gaming Operator License and Recipient Racetrack Gaming License [NEW]
Subchapter 9. Requirements for Manufacturer, Distributor, or Manufacturer/Distributor, and Their Employee License Applicants [NEW]
Subchapter 11. Requirements for Vendor License [NEW]
Subchapter 13. Requirements for Key Executive License or Gaming Employee License and Amendments to Any Employee License [NEW]
Subchapter 15. Requirements for Independent Testing Laboratory Licenses [NEW]
Subchapter 17. Fees and Assessments [NEW]
Subchapter 19. Consideration of License Application and Licensee Disciplinary Actions [NEW]
AUTHORITY:
75 Oklahoma Statutes §§ 302, 305, and 307; Title 3A O.S., § 204(A); Oklahoma Horse Racing Commission
DATES:
Adoption:
March 23, 2006
Approved by Governor:
May 11, 2006
Effective:
Immediately upon Governor's approval
Expiration:
Effective through July 14, 2006, unless superseded by another rule or disapproved by the Legislature.
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
Subchapter 1. General Provisions [NEW]
325:80-1-1 [NEW]
325:80-1-2[NEW]
325:80-1-3 [NEW]
Subchapter 3. Gaming License Classifications [NEW]
325:80-3-1 [NEW]
Subchapter 5. Gaming Licenses and Applications [NEW]
325:80-5-1 [NEW]
325:80-5-2 [NEW]
325:80-5-3 [NEW]
325:80-5-4 [NEW]
325:80-5-5 [NEW]
325:80-5-6 [NEW]
Subchapter 7. Requirements for Racetrack Gaming Operator License and Recipient Racetrack Gaming License [NEW]
325:80-7-1 [NEW]
325:80-7-2 [NEW]
325:80-7-3 [NEW]
325:80-7-4 [NEW]
325:80-7-5 [NEW]
Subchapter 9. Requirements for Manufacturer, Distributor, or Manufacturer/Distributor, and Their Employee License Applicants [NEW]
325:80-9-1 [NEW]
325:80-9-2 [NEW]
Subchapter 11. Requirements for Vendor License [NEW]
325:80-11-1 [NEW]
325:80-11-2 [NEW]
325:80-11-3 [NEW]
325:80-11-4 [NEW]
Subchapter 13. Requirements for Key Executive License or Gaming Employee License and Amendments to Any Employee License [NEW]
325:80-13-1 [NEW]
325:80-13-2 [NEW]
325:80-13-3 [NEW]
325:80-13-4 [NEW]
325:80-13-5 [NEW]
325:80-13-6 [NEW]
325:80-13-7 [NEW]
325:80-13-8 [NEW]
Subchapter 15. Requirements for Independent Testing Laboratory Licenses [NEW]
325:80-15-1 [NEW]
Subchapter 17. Fees and Assessments [NEW]
325:80-17-1 [NEW]
Subchapter 19. Consideration of License Application and Licensee Disciplinary Actions [NEW]
325:80-19-1 [NEW]
325:80-19-2 [NEW]
325:80-19-3 [NEW]
325:80-19-4 [NEW]
325:80-19-5 [NEW]
Gubernatorial approval:
April 6, 2005

Register publication:
23 Ok Reg 1150
Docket number:
06-748
INCORPORATIONS BY REFERENCE:
Not Applicable
FINDING OF EMERGENCY:
The Oklahoma Horse Racing Commission finds that compelling, extraordinary circumstances necessitate the emergency adoption of rules to OAC 325 *Rules for Racetrack Gaming*. The reasons for this finding are as follows: 1. In the time since approval of the original rules, some of the stakeholders - the racetracks and the horsemen's representative organizations - have contended that these original rules placed the racetracks and horsemen at a competitive disadvantage to Tribal casinos for the following reasons: a) the rules did not completely follow the language in the Act; b) further, the rules did not adequately address all of the authorized games; c) the rules introduced a stricter regulation that restricted the operation of the games, resulting in seemingly unnecessary regulation and language not found in the Act; and d) the original rules also set criteria and specifications regarding the functioning of the games that unfortunately did not allow for technological advances in the evolution of the authorized games. 2. These rules are being submitted under emergency rulemaking so that, if approved by Governor Henry, the rules can become effective May 11, 2006 - approximately 45 days sooner - rather than waiting for approval under permanent rulemaking which is projected to occur June 25, 2006. This difference in time can make a decidedly positive financial impact because the new rules are expected to bring more gaming dollars which, besides the increased assistance to education and more game options for the gaming participant, will directly impact a number of the stakeholders in the horse racing industry - the racetracks and the horsemen. 3. As such, it is in the best interest of the horse racing industry that the new rules for authorized gaming, which is expected to enhance horsemen's purses, begin as soon as practical. Further, It is in the best interest of the State as a whole that increased State revenues from the new rules for authorized gaming at the racetracks begin to accrue as soon as practical before the promulgation of the rules under permanent rulemaking. Therefore, **the Commission finds that a compelling public interest requires the adoption of emergency rules implementing the new rules for authorized gaming permitted under the State-Tribal Gaming Act.**
ANALYSIS:
On December 15, 2005, Chairman Calvert appointed an Ad Hoc Committee on Gaming Rules which addressed the concerns of some of the stakeholders [shown in detail under Findings of Emergency, Item 1, on previous page]. Membership on the Ad Hoc Committee included some of the key stakeholders. The Committee, chaired by Chairman Randy Calvert, consisted of three (3) Commissioners of the Oklahoma Horse Racing Commission [Commissioners Randy Calvert, Roger Cole and Patrick Grimmett], the Executive Director of the Horse Racing Commission [Constantin A. Rieger], the Commission Counsel [Neal Leader], one (1) representative of the Oklahoma Quarter Horse Racing Association [Debbie Schauf], one (1) representative of the Thoroughbred Racing Association of Oklahoma [Joe Lucas], racetrack representatives [Scott Daruty for Remington Park, Bob Rabon for Blue Ribbon Downs and Mark Enterline for Will Rogers Downs], Oklahoma Thoroughbred Association [R.D. Logan] and John Smicklas [Thoroughbred Owner]. Through a number of long meetings from December, 2005 through March, 2006, new rules were drafted. It was the Ad Hoc Committee on Gaming Rules' recommendation to the Horse Racing Commission on March 23, 2006 that the following rules be adopted under emergency rulemaking. The Commission then took action to adopt the emergency rules.
CONTACT PERSON:
Bonnie Morris, (405) 943-6472

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 7.5. O.S., SECTION 253(D):

SUBCHAPTER 1. GENERAL PROVISIONS

325:80-1-1. Purpose

The Rules in this chapter establish Standards and requirements for licensure, certification, registration, renewal and other approval under the State-Tribal Gaming Act.

325:80-1-2. Definitions

Unless otherwise defined below, terms used in this chapter have the same meanings as set forth in the State-Tribal Gaming Act:

"Act" means the State-Tribal Gaming Act enacted by the people with passage of State Question 712.

"Authorized games" means Electronic Amusement Games as defined in the Act, Electronic Bonanza-Style Bingo Games as defined in the Act, Electronic Instant Bingo Games as defined in the Act, Compact Electronic Games as defined in these Rules, and Non-Compact Electronic Games as defined by these Rules.

"Commission" means the Oklahoma Horse Racing Commission.

"Component" means a part of a Gaming Machine that is necessary for the proper operation and essential function of the Gaming Machine, including but not limited to a hopper, coin acceptor, Microprocessor and related circuitry, Program Storage Device, Bill Acceptor, cashless system, progressive system, monitoring system, meter and any other parts the Commission determines are Components; a Component is necessary for the proper operation and essential function of a Gaming Machine if it affects, directly or indirectly, the Gaming Machine's operation, game outcome, security, record-keeping, or communication with the central monitoring system; parts such as light bulbs, buttons, wires, decorative glass, fuses, batteries, handles, springs, brackets, and locks are not Components if they do not directly or indirectly affect the Gaming Machine's operation, game outcome, security, record-keeping, or communication with the central monitoring system.

"Control," when used as a noun, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or to exercise significant influence over management and policies due to financial investment, assumption of debts or expenses, or other monetary or non-monetary considerations extended to the applicant or Licensee; when used as a verb, "Control" means to exert, directly or indirectly, such power, or to be in a position to exert such power.

"Distributor" means a non-Manufacturer who leases, sells, distributes or markets any Gaming Machine, associated equipment, game program or Program Storage Device to a Racetrack Gaming Operator Licensee in the State of Oklahoma.

"Enclosure" means all areas of the property of an Organization Licensee to which admission can be obtained only by payment of an admission fee or upon presentation of proper credentials and all parking areas designed to serve the facility which are owned or leased by the Organization Licensee.

"Executive director" means the executive director of the Commission.

"Gaming agent" means a Commission employee trained in machine gaming, responsible for on-site enforcement of the

Act and these Rules and other regulatory responsibilities as assigned by the Executive Director.

"Gaming employee" means any employee of a Racetrack Gaming Operator Licensee who works in any capacity within the confines of the Gaming Facility.

"Gaming employee license" means a license issued to a Gaming Employee by the Commission.

"Gaming facility" means that area within an Organization Licensee's Racetrack Premises approved by the Commission that has been set aside for the use of Authorized Games and related activities and access to which is limited to patrons 18 years of age or older.

"Gaming machine" means a contrivance designed primarily for gambling purposes which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, or any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

"Gaming machine license" means a license issued by the Commission to a Racetrack Gaming Operator Licensee for each Gaming Machine brought into the Racetrack Premises, for any purpose, including but not limited to storage, repair, modification or play.

"Independent testing laboratory" means a laboratory with a national reputation for honesty, independence, competence and timeliness that is demonstrably competent and qualified to scientifically test and evaluate devices for compliance with the Act and to otherwise perform the functions assigned to it in the Act. An Independent Testing Laboratory shall not be owned or Controlled by an Organization Licensee, an Indian tribe, the State, or any Manufacturer, supplier or operator of Gaming Machine. The use of an Independent Testing Laboratory for any purpose related to the operation of Authorized Games by an Organization Licensee under the Act shall be made from a list of one or more laboratories approved by the Commission.

"Key executive" means an executive of a Racetrack Gaming Operator Licensee, Manufacturer, Distributor, Manufacturer/Distributor, Vendor, or Independent Testing Laboratory who supplies goods and/or services which are used in the actual gaming, gaming monitoring or gaming surveillance, including officers, directors, and other Persons having the power to exercise significant influence over decisions concerning any part of the licensed gaming operations of the licensed employer, which for a Racetrack Gaming Operator Licensee, would include but would not be limited to the General Manager, Comptroller, Director of Finance, Director of Security, Director of Electronic Gaming Operations, and Director of Marketing.

"Key executive license" means a license issued to a Key Executive by the Commission.

"Manufacturer" means a Person who manufactures, fabricates, assembles, produces, programs, refurbishes, or makes Modification to any Gaming Machine or Component thereof, or associated Program Storage Device for sale, lease, distribution, use or play by a Racetrack Gaming Operator Licensee in the State of Oklahoma.

"Manufacturer licensee" means a Manufacturer licensed by the Commission.

"Manufacturer/Distributor" means a Person who is both a Manufacturer and Distributor as defined in these Rules.

"Manufacturer/Distributor licensee" means a Manufacturer/Distributor Licensed by the Commission.

"Modification" means a change or alteration in an approved Gaming Machine or Component thereof that affects the manner or mode of play (including the percentage paid by the Gaming Machine), as well as a change in Control or graphics programs "Modification" does not include a conversion from one approved mode of play to another approved mode of play, replacement of one game for another approved game replacement of one Component with another pre-approved Component, or the rebuilding of a previously approved Gaming Machine with pre-approved Components.

"Occupation gaming license" means any gaming license issued by the Commission other than a Racetrack Gaming Operator License or a Recipient Racetrack Gaming License.

"Occupation gaming licensee" means any Person receiving an Occupation Gaming License issued by the Commission.

"Organization license" means a license issued by the Commission which authorizes the licensee to conduct a race meeting in Oklahoma and accept pari-mutuel wagers on the outcome of live and simulcast horse racing.

"Organization licensee" means any Person receiving an Organization License issued by the Commission.

"Participating tribe" means an Indian tribe which operates a Gaming Facility within a radius of twenty (20) miles from the Enclosure of a Recipient Racetrack Gaming Licensee pursuant to a Model Compact.

"Person" means any individual, partnership, corporation, or other association or entity.

"Program storage device" means an EPROM (Erasable Programmable Read-Only Memory), hard drive, DVD, CD-ROM or other storage medium which is used for storing program instructions in a Gaming Machine, system or other associated equipment.

"Racetrack gaming operator license" means a license issued by the Commission which authorizes an Organization Licensee to conduct Authorized Games under the regulation, implementation and enforcement of the Commission.

"Racetrack gaming operator licensee" means any Organization Licensee which has been issued a Racetrack Gaming Operator License by the Commission.

"Racetrack premises" means the property that is owned or leased by the Organization Licensee that is used for racetrack purposes.

"Recipient racetrack gaming license" means a license issued by the Commission which authorizes the licensee to receive the funds authorized in the Act from Participating Tribes.

"Recipient racetrack gaming licensee" means any Person receiving a Recipient Racetrack Gaming License issued by the Commission.

"Rules" means the Commission's *Rules for Racetrack Gaming*.

"State" means the State of Oklahoma.

"This Title" means Title 325 of the Oklahoma Administrative Code.

"Vendor" means a Person, other than a licensed Manufacturer, Distributor, or Manufacturer/Distributor, who in selling or leasing goods and/or services to a Racetrack Gaming Operator Licensee, conducts operations on-site at a racetrack Gaming Facility provided that attorneys shall be exempt from the licensing requirement herein to be extent that they are providing services covered by their professional licenses.

"Vendor employee" means a Person employed by a Vendor and licensed by the Commission as a Vendor Employee.

"Vendor employee license" means a license which authorizes any employee to work for a licensed Vendor and supply goods and/or services on-site at the Gaming Facility.

"Vendor license" means a license issued by the Commission which authorizes a Vendor to sell goods and/or services to a Racetrack Gaming Operator Licensee.

325:80-1-3. Applicability of Rules - Exceptions

Rules pertaining to licenses and rulings against Licensees shall apply in like force to the spouse and members of the immediate family or household of the licensee if the continuation of participation in gaming by the affected Person circumvents the intent of the rule or affects the ruling by permitting a Person under the Control or direction of the Licensee to serve in essence as a substitute for a suspended Licensee, or a Person ineligible to participate in a particular activity.

SUBCHAPTER 3. GAMING LICENSE CLASSIFICATIONS

325:80-3-1. Types of Gaming Licenses

(a) Organization License, which authorizes the Licensee to conduct a race meeting in Oklahoma and accept pari-mutuel wagers on the outcome of live and simulcast horse racing.

(b) Racetrack Gaming Operator License, which authorizes an Organization Licensee to conduct Authorized Games as defined by the Act under the regulation, implementation and enforcement of the Commission. The License authorizes the approved Licensee to acquire, own, lease, possess, and operate Gaming Machine on its licensed premises.

(c) Recipient Racetrack Gaming License, which authorizes the approved Licensee to receive the funds authorized in the Act from Participating Tribes.

(d) Occupation Gaming License, which means any gaming license issued by the Commission other than a Racetrack Gaming Operator License or a Recipient Racetrack Gaming License.

(e) Manufacturer License, which authorizes the approved Licensee to manufacture, fabricate, assemble, produce, program, refurbish, or make Modifications to any Gaming Machine, or associated equipment in accordance with the Act and Commission Rules;

(f) Distributor License, which authorizes the approved non-Manufacturer to lease, sell, distribute or market any Gaming Machine, associated equipment, game program or Program Storage Device in Oklahoma or outside the State in accordance with the Act and Commission Rules; and

(g) Manufacturer/Distributor License, which authorizes the approved licensee to manufacture, fabricate, assemble, produce, refurbish, lease, sell, distribute, market or make Modifications to any Gaming Machine, associated equipment, game program or Program Storage Device in Oklahoma or outside the State in accordance with the Act and Commission Rules;

(h) Vendor License, which authorizes a Vendor, not licensed as a Manufacturer, Distributor, or Manufacturer/Distributor, that conducts operations on-site at a racetrack Gaming Facility to sell or lease goods and/or services to Racetrack Gaming Operator Licensees.

(i) Manufacturer's Employee License, which authorizes the approved Licensee to be an employee of a Manufacturer who supplies gaming-related goods and/or services to the Racetrack Gaming Operator Licensee on-site at the Gaming Facility.

(j) Distributor's Employee License, which authorizes the approved Licensee to be an employee of a Distributor who supplies gaming-related goods and/or services to the Racetrack Gaming Operator Licensee on-site at the Gaming Facility.

(k) Manufacturer/Distributor's Employee License, which authorizes the approved Licensee to be an employee of a Manufacturer/Distributor who supplies gaming-related goods and/or services to the Racetrack Gaming Operator Licensee on-site at the Gaming Facility.

(l) Key Executive License, which authorizes the recipient to be employed as a Key Executive.

(m) Vendor Employee License, which authorizes any employee to work for a licensed Vendor and supply goods and/or services on-site at the Gaming Facility.

(n) Gaming Employee License, which authorizes the recipient to be employed as a Gaming Employee.

(o) Gaming Machine License, which authorizes the Racetrack Gaming Operator Licensee to use or have a Gaming Machine on the Racetrack Premises.

(p) None of these gaming licenses may be transferred, sold, or assigned.

SUBCHAPTER 5. GAMING LICENSES AND APPLICATIONS

325:80-5-1. General provisions

(a) Any license, certification, registration, renewal or other approval issued by the Commission is deemed a revocable privilege. Except as otherwise provided in these Rules, all gaming licenses of whatever type are issued for a calendar year and no matter when issued during a calendar year, the license will expire at midnight, December 31, of the calendar year.

(b) Any application submitted under the provisions of the Act or these Rules constitute the seeking of a privilege, and the burden of proving qualification is on the applicant.

(c) Any application for license, certification, registration, renewal or other approval from the Commission will constitute a request to the Commission for a decision on the applicant's general suitability, character, integrity, and ability to engage in, or be associated with, gaming activity in Oklahoma. By filing an application with the Commission, the applicant specifically consents to investigation to the extent deemed appropriate by the Commission. Without limiting the foregoing, the investigation may include a background investigation and a credit check of the applicant and, in the case of Manufacturers, Distributors, Manufacturers/Distributors and Vendors who supply goods and/or services which are used in the actual gaming, gaming monitoring and gaming surveillance, and/or, in the case of Gaming Machine Manufacturers, Distributors and Manufacturers/Distributors, all Persons or entities having a 10% or more interest in the applicant.

(d) By applying for and obtaining any license, certification, registration, renewal or other approval from the Commission, the holder agrees to abide by all provisions of the Act and these Rules.

(e) By applying for a license, certification, registration, renewal or other approval from the Commission, the applicant accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss that may result from any disclosure or publication of any material or information contained in or relating to any application to the Commission. The mere fact that a Person or entity labels information submitted to the Commission or its staff as confidential does not make the information provided confidential. Confidentiality privileges are created by law and not by a Person or an entity submitting information to the State or its agents.

325:80-5-2. Time for filing an application for Racetrack Gaming Operator License

An application for a Racetrack Gaming Operator License must be filed no later than June 1 of each year for gaming conducted in the subsequent calendar year. Applications to operate Authorized Games in Calendar Year 2005 may be filed any time prior to June 1, 2005. At the request of any applicant, the Commission may extend the deadline for Calendar Year 2005.

325:80-5-3. Application amendment and withdrawal

(a) If there is any change in the information submitted to the Commission in the application, the applicant must file, within ten (10) business days of becoming aware of the change, a written amendment disclosing all facts necessary to adequately inform the Commission of the change in circumstances before the Commission takes the requested action.

(b) An applicant may amend the application at any time prior to final action by the Commission.

(c) An amendment to an application filed by the applicant after the date on which the Commission has taken the action sought under the application, if the amendment is approved by the Commission, will become effective on the date determined by the Commission.

(d) An applicant may file a written request for withdrawal of the application at any time prior to final action on the application by the Commission.

325:80-5-4. Payment of non-refundable fees and costs required

The Commission may refuse to take final action on any application if all license regulation, investigation and fingerprint fees have not been paid in full. The Commission may deny the application if the applicant refuses or fails to pay all such fees. Additionally, an applicant who has refused or failed to pay the required costs will not be eligible to file any other application with the Commission until all such fees are paid in full. Neither the license fee or regulation fees nor any other fee is refundable.

325:80-5-5. Conditions of a Racetrack Gaming Operator License

In addition to conditions imposed in any conditional license issued by the Commission, the original and/or renewal licenses issued by the Commission are subject to the following conditions:

(1) With respect to a Racetrack Gaming Operator Licensee, the Licensee will at all times make its Gaming Facility and Racetrack Premises available for inspection by the Commission or the Oklahoma State Auditor and Inspector or their authorized representatives, with or without prior announcement. Additionally, the Licensee understands that a Gaming Agent is authorized to be present anywhere within the Gaming Facility each day any time during operation of the Gaming Facility, and whenever else deemed appropriate by the Commission Director of Law Enforcement.

(2) The Licensee consents to the examination of all accounts, bank accounts, and records of, or under the Control of the Licensee, or any entity in which the Licensee has a direct or indirect Controlling interest. Upon request of the Commission or its authorized representative, the Licensee must authorize all third parties in possession or Control of the requested documents to allow the Commission or the Oklahoma State Auditor and Inspector or their representatives to examine such documents.

(3) The Licensee accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss that may result from any disclosure or publication of material or information supplied to the agency in connection with any application to the Commission.

(4) The Licensee will be responsible for all applicable registration, taxation, and licensing imposed by the Act or other State law upon the license, Gaming Machine, or associated equipment.

325:80-5-6. General grounds for refusal to issue license or denial of Gaming License applications

The Commission may refuse to issue a license or deny any license application on any grounds deemed reasonable by the

Commission. Without limiting the foregoing, the Commission may deny the application on any of the following grounds:

(1) evidence of an untrue or misleading statement of material fact, or willful omission of any material fact, in any application, statement, or notice filed with the Commission, made in connection with any investigation, including the background investigation, or otherwise made to the Commission or its staff;

(2) conviction of any felony in any jurisdiction;

(3) conviction of any gambling offense in any jurisdiction;

(4) entry of any civil or administrative judgment against the applicant that is based, in whole or in part, on conduct that allegedly constituted a felony crime in the State or other jurisdiction the conduct occurred, or involved a gambling violation(s);

(5) association with Persons or businesses of known criminal background or Persons of disreputable character that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

(6) any aspect of the applicant's past conduct, character, or behavior that the Commission determines would adversely affect the credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

(7) failure of the applicant or its employees to demonstrate adequate business ability and experience to establish, operate, and maintain the business for the type of activity for which application is made;

(8) failure to demonstrate adequate financing for the operation proposed in the application;

(9) failure to satisfy any requirement for application or to timely respond to any request by the Commission for additional information;

(10) permanent suspension, revocation, denial or other limiting action on any gaming license issued by any jurisdiction;

(11) approval of the application would otherwise be contrary to Oklahoma law or public policy; or

(12) with respect to a Racetrack Gaming Operator Licensee's or Recipient Racetrack Gaming Licensee's failure to conduct the number of live races required by the Act (unless written consent to such failure has been received from the official horsemen's representative organization(s) for the breed or breeds to which such failure relates).

SUBCHAPTER 7. REQUIREMENTS FOR RACETRACK GAMING OPERATOR LICENSE AND RECIPIENT RACETRACK GAMING LICENSE

325:80-7-1. Prerequisite for eligibility for initial license and renewals

(a) To qualify to hold and operate a Racetrack Gaming Operator License or Recipient Racetrack Gaming License, a racetrack must be licensed by the Oklahoma Horse Racing Commission pursuant to provisions of Title 3A of the Oklahoma Statutes to conduct live horse races or simulcast races and must meet the requirements pursuant to Title 3A and provisions of the Act and these Rules.

(b) After initial issuance of a Racetrack Gaming Operator's License, the license shall be renewed each year upon the following conditions:

(1) the payment of the annual Racetrack Gaming Operator Licensee application license fee, the annual Racetrack Gaming Operator Licensee regulation fee and the annual Racetrack Gaming Operator Licensee's Gaming Machine license fees;

(2) the applicant has conducted the required number of live races to be eligible to operate Authorized Games and furnishing the Commission with any supplementary information required by the Commission or its staff; and

(3) the issuance of an Organization License to that applicant for the applicable calendar year.

325:80-7-2. General form and requirements for Racetrack Gaming Operator License application

(a) Every application and statement required to be filed under the Act or these Rules must be submitted on forms supplied or approved by the Executive Director and must contain such information and documents as required.

(b) The applicant must file with the application all required supplemental forms.

(c) Upon request of the Commission, the applicant must further supplement any information provided in the application. The applicant must provide all requested documents, records, supporting data, and other information within the time period specified in the request. If the applicant fails to provide the requested information within the required time period as set forth in the request or these Rules, the Commission may deny the application unless good cause is shown.

(d) All information required to be included in an application must be true and complete as of the date of Commission action sought by the applicant. If there is any change in the information contained in the application, the applicant must file a written amendment in accordance with these Rules.

(e) The application and any amendments must be sworn to or affirmed by the applicant before a notary public. If any document is signed by an attorney for the applicant, the signature must certify that the attorney has read the document and that, to the best of the attorney's knowledge, information and belief, based on diligent inquiry, the contents of the documents supplied are true.

(f) The applicant must cooperate fully with the Commission and any agent of the Commission with respect to the background investigation of the applicant, including, upon request, making available any and all of its books and records for inspection. The Commission will examine the background, personal history, financial associations, character, record and reputation of the applicant to the extent the Commission determines.

(g) The Commission will automatically deny the application of any applicant that refuses to submit to a background investigation as required pursuant to the Act and these Rules.

(h) Neither the State, the Commission, any agency with which the Commission contracts to conduct background investigations, nor the employees of any of the foregoing, may be held liable for any inaccurate information obtained through such an investigation.

325:80-7-3. Operations Plan requirement

(a) The applicant for a Racetrack Gaming Operator License must submit with the application a proposed operations plan for the conduct of gaming. The plan must include the following:

(1) a drawing or drawings to scale of the building(s) in which the applicant proposes to conduct gaming, with the area(s) designated as the proposed Gaming Facility clearly outlined;

(2) a general description of the type and number of Gaming Machines proposed for operation;

(3) generic description of the games to be played on the machines and the proposed placement of the machines in the Gaming Facility;

(4) proposed administrative, accounting, and internal control procedures, including monetary control operations;

(5) proposed security plan;

(6) proposed staffing plan for gaming operations, including identification of Key Executives and employees;

(7) license applications for Key Executives;

(8) method to be used for prize payouts;

(9) details of any proposed progressive systems; and

(10) any other information requested by the Commission.

(b) The operations plan must provide for an escrow account or accounts to be established and maintained in accordance with Commission requirements for the purpose of holding in reserve large or progressive prizes to be won by participants and generated by the Gaming Facility. In the alternative, the Operator could secure the payment of such prizes through other funding mechanisms such as an irrevocable surety bond, irrevocable trust with an independent financial institution, other trust mechanism, or letters of credit. The use of such alternative methods of prize payment must in every instance be preapproved by the Commission. Any purse monies generated by the Gaming Facility must be maintained in a separate escrow account.

(c) An applicant for a Racetrack Gaming Operator License is responsible for ensuring that Key Executive applications are filed in accordance with the Act and these Rules. The Commission may delay approval of or deny an application for a Racetrack Gaming Operator License on the grounds that a Key Executive application has not been submitted as required.

(d) A Racetrack Gaming Operator License will not be granted unless the Commission first determines that the operations plan submitted is suitable for the type of operation proposed and otherwise complies with the requirements of the Act and these Rules.

325:80-7-4. Security Plan requirement

(a) Racetrack Gaming Operator Licensees must implement and maintain security measures that will ensure safe and honest operation of the gaming establishment.

(b) Security personnel must be licensed by the Commission and must display a valid Commission license badge at all times while on duty. All armed security personnel must be Council on Law Enforcement Education and Training (CLEET) certified.

(c) At the same time that the applicant submits an application for a Racetrack Gaming Operator License, the applicant must submit a security plan for approval by the Commission Director of Law Enforcement. The security plan shall provide for a sufficient number of security personnel who must be on duty and in appropriate areas to ensure that gaming activities are conducted safely, honestly, and in compliance with the law. The Operator's security plan must specify how many security officers will be present during operating hours and how many will be armed. If the Commission's Director of Law Enforcement determines that the security measures at a Gaming Facility are inadequate, the Director shall notify the Operator, who may either correct the deficiency within forty-eight (48) hours or a longer period of time established by the Law Enforcement Director, or request a hearing on the issue before the Executive Director who shall resolve the issue. The Executive Director's decision may be appealed to the Commission. The security plan submitted to the Commission shall include a surveillance system which meets the minimum requirements established in these Rules.

325:80-7-5. Requirements for a Recipient Racetrack Gaming License

Applicants for a Recipient Racetrack Gaming License must submit an application to the Commission on a form approved or provided by the Executive Director which demonstrates: 1) the applicant has been granted an Organization License by the Commission, 2) the applicant is eligible, under the Act, to be a Recipient Racetrack Gaming Licensee, and 3) there is a Participating Tribe(s) within a radius of twenty (20) miles of the applicant's racing Enclosure that is operating Authorized Games under a Model Compact. The applicant must submit the required license fee with the application.

SUBCHAPTER 9. REQUIREMENTS FOR MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER/DISTRIBUTOR, AND THEIR EMPLOYEE LICENSE APPLICANTS

325:80-9-1. Application for Manufacturer, Distributor, or Manufacturer/ Distributor License

(a) A Person may act as a Manufacturer, Distributor, or Manufacturer/Distributor of Gaming Machines, or Gaming Machine Components, to Racetrack Gaming Operator Licensees only if that Person has received from the Commission

a license specifically authorizing that Person to act as a Manufacturer, Distributor, or Manufacturer/Distributor's License'.
(b) Applications for Manufacturer, Distributor, or Manufacturer/Distributor Licenses must be made on a form prescribed by the Commission.
(c) An applicant for a Manufacturer, Distributor, or Manufacturer/Distributor's License may be required to post, as a condition of issuance of the license, a bond in a manner and in an amount established by the Commission. Any such instrument must be issued by a surety company authorized to transact business in Oklahoma and must be satisfactory to the Commission.

325:80-9-2. Manufacturer's, Distributor's, or Manufacturer/Distributor's Employee License

Any employee, who works for a licensed Manufacturer, Distributor, or Manufacturer/Distributor and will be supplying gaming-related goods and/or services to the Racetrack Gaming Operator Licensee on-site at the Gaming Facility, must have a Manufacturer's Employee License, a Distributor's Employee License, or a Manufacturer/Distributor's Employee License. A Manufacturer, Distributor, or Manufacturer/Distributor License must be issued before an employee can be issued a license to represent that company. An application for Manufacturer's Employee License, Distributor's Employee License, or Manufacturer/Distributor's Employee License must be signed by an authorized representative of the Manufacturer, Distributor, or Manufacturer/Distributor for whom the employee works or will work.

SUBCHAPTER 11. REQUIREMENTS FOR VENDOR LICENSE

325:80-11-1. Approved Vendor list

The Racetrack Gaming Operator Licensee shall maintain a list of all Vendors the Racetrack Gaming Operator Licensee approves. Before doing business with the Racetrack Gaming Operator Licensee, a Vendor must be issued a Vendor License by the Commission.

325:80-11-2. Vendor License

A Vendor's License is required of any Vendor not licensed as a Manufacturer, Distributor, or Manufacturer/Distributor that conducts operations on-site at a racetrack Gaming Facility. An applicant for a Vendor's License must complete the appropriate Commission application form. That form must be signed by an authorized representative of the Racetrack Gaming Operator Licensee(s) for which the Vendor wishes to do business. A letter from the Racetrack Gaming Operator Licensee(s) authorizing the Vendor to do business may be used in lieu of a signature on the application form, If, after initial licensing, any other Racetrack Gaming Operator Licensee desires to acquire goods and/or services from the licensed Vendor, the Operator must file the letter with the Commission indicating that desire; provided that attorneys shall be exempt from the licensing requirement herein to be extent that they are providing services covered by their professional licenses.

325:80-11-3. Vendor Employee License

Any employee who works for a licensed Vendor and will be supplying goods and/or services on-site at the Gaming Facility must have a Vendor Employee License. A Vendor License must be issued before a Vendor Employee can be issued a license to represent that company. A Vendor Employee License must be signed by an authorized representative of the Vendor for whom the Vendor Employee works or will work.

325:80-11-4. Vendor disclosure requirement

(a) For each Vendor on the Racetrack Gaming Operator Licensee's list, the Operator must indicate whether the Racetrack Gaming Operator Licensee anticipates purchasing more than $500,000 of goods and/or services from the Vendor in a consecutive 12 month period. Further, for each Vendor which the Racetrack Gaming Operator Licensee anticipates expending more than $500,000 in a consecutive 12 month period, the Operator shall also indicate whether any of the Operator's key employees or any Person or entity having a 3% or more interest in the applicant Operator owns 3% or more interest in the approved Vendor.
(b) Any Vendor that receives more than $500,000 in a consecutive 12 month period for goods and/or services from a Racetrack Gaming Operator Licensee must confirm that fact by notifying in writing both the Operator and the Commission. The Racetrack Gaming Operator Licensee must maintain a list of approved Vendors including payments to such Vendors for submission to the Commission on a monthly basis.

SUBCHAPTER 13. REQUIREMENTS FOR KEY EXECUTIVE LICENSE OR GAMING EMPLOYEE LICENSE AND AMENDMENTS TO ANY EMPLOYEE LICENSE

325:80-13-1. Application required

An applicant for a Key Executive License or Gaming Employee License must submit a complete Application with his or her fingerprints in duplicate on fingerprint cards and his or her photograph in duplicate. The fingerprints will not be accepted unless the fingerprints were taken under the supervision of, and certified by, Commission licensing personnel, a federal agency, a State police officer, a county sheriff, a municipal chief of police, or sworn city or county peace officer. The photographs must be no smaller than 3" x 2" and must be satisfactory to the Commission. The photographs also must have been taken no earlier than three months before the date the application for license was filed.

325:80-13-2. When Key Executive applications are due

At the time of filing an application for license by a Racetrack Gaming Operator Licensee, applications of all known

Key Executives must be submitted. Applications for other Key Executives must be filed within thirty (30) business days within employment by the Racetrack Gaming Operator Licensee.

325:80-13-3. Employer-specific nature of all Employee Licenses

All licenses issued to Key Executives, Gaming Employees, Vendor Employees and employees of Manufacturers, Distributors, or Manufacturer/Distributors shall be employer-specific, and each license shall identify not only the employee to whom the license is issued, but also specify the full name of the employing Licensee.

325:80-13-4. Amended Employee Licenses

All licenses issued to Key Executives, Gaming Employees, Vendor Employees and employees of Manufacturers, Distributors, Manufacturer/Distributors, and Independent Testing Laboratories may, upon written application of a licensed employer, other than the original employer, be amended to enable the Licensee to begin employment with a different licensed employer. An amended license issued in response to such a request shall contain the name of the employee and the full name of the new licensed employer. No Licensee may begin working for a new employer until the employee has been issued an amended license containing the name of the new employer.

325:80-13-5. License required prior to employment

With the exception of those who apply for a Key Executive License or Gaming Employee License as provided in Rule 325:80-13-8, a Key Executive or Gaming Employee of a Racetrack Gaming Operator Licensee may not be employed until such time as his or her application for a license has been completed, and the Commission has issued the applicant a Key Executive License or Gaming Employee License.

325:80-13-6. Employee Licenses - Refusal to issue or denial and license termination upon loss of employment

All employee licenses are the property of the State of Oklahoma. Any employee whose employment is terminated for any reason must surrender his or her license to the Commission within five (5) business days of termination. An application for any type employee license may be denied for any reason that an application for a horse racing Occupation Gaming License may be denied. It may also be denied if an applicant has had a gaming or horse racing license revoked or suspended in any other jurisdiction or has been found guilty or pled guilty or no contest to any felony, or any crime involving gaming or horse racing. The grounds listed above in these Rules may also be used as a basis for refusal to issue a license.

325:80-13-7. Additional grounds for denial of Key Executive License application

In addition to the general grounds for denying any type of employee license, an application for a Key Executive License may be denied if the Commission Director of Law Enforcement finds that the applicant 1) has knowingly had a business or social relationship with a convicted felon, 2) has or has had a substance abuse problem, 3) has an employment, military, or financial history which may affect the applicant's ability to properly perform his or her duties or reflect unfavorably on the integrity of a GamingFacility, or 4) has a reputation which may affect the applicant's ability to properly perform his or her duties or reflect unfavorably on the integrity of a Facility.

325:80-13-8. Limited pre-licensed employment for Key Executives and Gaming Employees

Applicants for a Key Executive License or Gaming Employee License who provide the required fingerprint cards, photographs, completed Application, and intent to employ statement may be issued by the Executive Director a written certification that their applications for a Key Executive License or Gaming Employee License are presently being processed. Upon the issuance of such certification to an applicant for a Key Executive License or a Gaming Employee License, the applicant may for a period of no more than 90 days be employed as a Gaming Employee by the Racetrack Gaming Operator Licensee whose name appears on the applicant's intent to employ statement. On application of such a Gaming Employee's employer, that 90 day period may be extended by the Commission Director of Law Enforcement if, and only if, the licensing process has not been completed. No further extensions are allowed.

SUBCHAPTER 15. REQUIREMENTS FOR INDEPENDENT TESTING LABORATORY LICENSE

325:80-15-1. Application required

Testing laboratories that wish to function as a Commission-approved Independent Testing Laboratory must apply to be issued an Independent Testing Laboratory License. The application must be accompanied by the required application fee and an investigation fee in an amount equal to one-half of the license fee.

(1) In addition to other information required on the application, any applicant must provide the following information for each of the last three years:

(A) address of main office and number of square feet used for testing;

(B) addresses of all satellite offices, if any, and number of square footage;

(C) number of full-time employees;

(D) number of machines tested;

(E) list of states for which the Laboratory has performed tests;

(F) list of countries for which the Laboratory has performed tests;

(G) list of states and countries in which the Laboratory has been licensed or certified.

(2) In addition, the Commission review of consideration of an application for an Independent Testing Laboratory shall include:

(A) For the testing laboratory and its parent corporation, if any, a complete corporate financial disclosure and review; a complete disclosure and review of any criminal proceedings, civil litigation or investigations by a regulatory entity; and an evaluation of its corporate good standing in the jurisdiction(s) where it is incorporated and/or does business.

(B) For its principal shareholders (10% or greater) and its officers and directors, a complete individual financial disclosure and review; a complete disclosure and review of any criminal proceedings, civil litigation or investigations by a regulatory entity; and a finding of suitability.

(C)The testing laboratory will demonstrate its relevant technical skill and capability by providing evidence of suitable testing previously conducted for state or tribal regulatory authorities. The Commission's Law Enforcement Division will conduct an on-site review of the testing laboratory's facilities as part of its evaluation and will be satisfied that the testing laboratory is qualified and competent to perform the testing required before making any recommendation for approval to the Commission.

(D) The testing laboratory must have in-house staff personnel in the following categories:

(i) Mathematicians

(ii) Mechanical, electrical and software engineering staff

(iii) Compliance engineering staff

(iv) Accounting system and communication protocol engineering specialists

(v) High-level engineering staff for new and current technology

(vi) Quality assurance staff

(E) The testing laboratory must have the ability to provide twenty-four hour, seven-day a week support for the Commission, including in-house personnel coverage.

(F)The testing laboratory must provide training and support staff for on-site field inspections to assist and/or train Gaming Agents on the security, compliance and accounting/auditing practices that should be used, with expenses paid by the testing laboratory.

(G) The testing laboratory must provide a quality assurance staff that verifies each test result.

(H) The testing laboratory must conduct an annual due diligence investigation on each employee of the testing laboratory and maintain such due diligence files on each employee.

(I)The testing laboratory must have physical building security in terms of surveillance systems and alarms to protect confidential information.

(J) The testing laboratory must demonstrate that it possesses multiple units of the approved signature device(s); that it provides signatures of the approved software with each certification which will assist in the conduct of field audits of the equipment; and that the Laboratory has the ability to provide the specifications on the various software verification methods (i.e., KOBETRON, DataMan and other types of algorithms that allow checking of gaming equipment) to assist the Commission in determining which verification tools will be acceptable.

(K) The testing laboratory must have adequate equipment to support the submissions for testing and also, additional units available for on-site inspections when laboratory presence is requested; must provide the requested signatures by taking those signatures at the Laboratory prior to storage of the storage media independent of the supplier; and a testing laboratory shall not rely on supplier-generated signatures.

(L) During the detailed communication protocol tests that are performed on the device side and the system side, the testing laboratory must use testing tools and testing techniques that are developed in compliance with the protocol used. The testing laboratory must have the ability to develop such tools independently without having to reply on the Manufacturer for the equipment.

(M) The testing laboratory must demonstrate that the testing it performs includes complete detailed tests to examine all external and internal functions, such as examinations of memory and communication protocol with all devices, of the gaming equipment being tested.

(N) The testing laboratory must have a national reputation for honesty, independence, competence and timeliness.

SUBCHAPTER 17. FEES AND ASSESSMENTS

325:80-17-1. Payment of fees and assessments

Applicants for any license issued by the Commission under the provisions of Chapters 80, 85 and 90 of This Title must pay all fees and assessments prescribed either by law or these Rules in the manner and at the time prescribed by law and/or these Rules. Application fees and applicable assessments for all Racetrack Gaming Operator Licenses and Recipient Racetrack Gaming Licenses must be paid by the applicant at the time that an application is filed with the Commission.

SUBCHAPTER 19. CONSIDERATION OF LICENSE APPLICATION AND LICENSEE DISCIPLINARY ACTIONS

325:80-19-1. Procedures for consideration of Applications for Racetrack Gaming Operator Licenses and Independent Testing Laboratory Licenses

Applications for a Racetrack Gaming Operator License and an Independent Testing Laboratory License will be heard and issued by the Commission.

325:80-19-2. Procedures for consideration of Applications for Manufacturer, Distributor, Manufacturer/Distributor and Key Executive Licenses

Applications for a Manufacturer, Distributor, Manufacturer/Distributor and Key Executive Licenses will be determined by the Executive Director after the Commission's Law Enforcement Division completes its background investigation and, based upon that investigation, makes a recommendation to the Executive Director.

(1) If the Law Enforcement Division recommendation is that the license be approved, the Executive Director shall grant the application by issuing a license.

(2) If the recommendation of the Law Enforcement Division is that the license not be issued, the applicant shall be notified in writing of the recommendation and the reasons therefore. If the applicant wishes to contest the recommendation, the applicant shall, within ten (10) days of receipt of the notice, request in writing a hearing before the Executive Director. If a written request for such a hearing is not received in the Commission office by close of business on the tenth day after receipt of notice of adverse recommendation, the recommendation of the Law Enforcement Division shall be approved and no license shall be issued.

(3) If a written request for a hearing is received in a timely manner, the Executive Director shall conduct a hearing in accordance with the Oklahoma Administrative Procedures Act and issue Findings of Fact, Conclusions of Law, and Order. If the Executive Director Rules in favor of the applicant, the matter may be disposed of by the issuance of a license without the issuance of a formal Order. Decisions adverse to the applicant are appealable to the District Court under the Oklahoma Administrative Procedures Act.

325:80-19-3. Procedures for consideration of Applications for Vendor, Vendor Employee and Gaming Employee Licenses

Applications for a Vendor, Vendor Employee or Gaming Employee License will be determined by the Commission's Board of Stewards after the Commission's Law Enforcement Division completes its background investigation and, based upon that investigation, makes a recommendation to the Board of Stewards.

(1) If the Law Enforcement Division recommendation is that the license be approved, the Board of Stewards shall grant the application by issuing a license.

(2) If the recommendation of the Law Enforcement Division is that the license not be issued, the applicant shall be notified in writing of the recommendation and the reasons therefore. If the applicant wishes to contest the recommendation, the applicant shall, within ten (10) days on receipt of the notice, request in writing a hearing before the Board of Stewards. If a written request for such a hearing is not received in the Commission office by close of business on the tenth day after receipt of notice of adverse recommendation, the recommendation of the Law Enforcement Division shall be approved and no license shall be issued.

(3) If the written request is received in a timely manner, the Board of Stewards shall conduct a hearing in accordance with the Oklahoma Administrative Procedures Act and issue Findings of Fact, Conclusions of Law, and Order. If the Board of Stewards rules in favor of the applicant, the matter may be disposed of by issuing a license without the issuance of a formal Order. Decisions adverse to the applicant are appealable to the District Court under the Oklahoma Administrative Procedures Act.

325:80-19-4. Disciplinary actions against Racetrack Gaming Operator Licensees and Independent Testing Laboratories

Disciplinary actions against a Racetrack Gaming Operator Licensee and an Independent Testing Laboratory Licensee shall be conducted, after required written notice and hearing before the Commission, in the same manner as conducted in regard to Organization Licensees and in accordance with the Oklahoma Administrative Procedures Act.

325:80-19-5. Disciplinary actions against all other occupation gaming Licensees

Disciplinary actions against all other Occupation Gaming Licensees shall be conducted by the Board of Stewards using the same procedures for disciplinary action regarding Persons issued racing Occupation Gaming Licenses by the Commission. Any appeals from the Board of Stewards' decisions shall be appealable to the Commission.

[OAR Docket #06-1143; filed 5-26-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 85. GAMING MACHINE SPECIFICATIONS AND USE AND OPERATION REQUIREMENTS

[OAR Docket #06-1144]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 1. General Provisions [NEW]
325:85-1-1. [NEW]
325:85-1-2. [NEW]
.Subchapter 3. Authorized Games [NEW]

325:85-3-1. [NEW]
325:85-3-2. [NEW]
Subchapter 5. Electronic Amusement Games Specifications [NEW]
325:85-5-1. [NEW]
Subchapter 7. Electronic Bonanza-Style Bingo Games Specifications [NEW]
325:85-7-1. [NEW]
Subchapter 9. Electronic Instant Bingo Games Specifications [NEW]
325:85-9-1. [NEW]
Subchapter 11. Required Certification and Approval of Electronic Amusement Games, Electronic Bonanza-Style Bingo Games and Electronic Instant Bingo Games [NEW]
325:85-11-1. [NEW]
325:85-11-1.1. [NEW]
325:85-11-5. [NEW]
325:85-11-8.1. [NEW]
325:85-11-9. [NEW]
325:85-11-12. [NEW]
Subchapter 12. Required Certification and Verification of Compact Electronic Games and Non-Compact Electronic Games [NEW]
325:85-12-1. [NEW]
325:85-12-2. [NEW]
325:85-12-3. [NEW]
325:85-12-4. [NEW]
325:85-12-5. [NEW]
325:85-12-6. [NEW]
Subchapter 13. Cashless Transactions [NEW]
325:85-13-1. [NEW]
325:85-13-4. [NEW]
325:85-13-5. [NEW]
325:85-13-6. [NEW]
325:85-13-7. [NEW]
325:85-13-8. [NEW]
Subchapter 15. Use and Operation Requirements Applicable to Electronic Amusement Games, Electronic Bonanza-Style Bingo Games and Electronic Instant Bingo Games [NEW]
325:85-15-0. [NEW]
325:85-15-1. [NEW]
325:85-15-3. [NEW]
325:85-15-4. [NEW]
325:85-15-8. [NEW]
325:85-15-9. [NEW]
325:85-15-10. [NEW]
325:85-15-11. [NEW]
325:85-15-12. [NEW]
325:85-15-13. [NEW]
325:85-15-14. [NEW]
325:85-15-15. [NEW]
325:85-15-16. [NEW]
325:85-15-17. [NEW]
325:85-15-18. [NEW]
325:85-15-19. [NEW]
325:85-15-20. [NEW]
325:85-15-21. [NEW]
325:85-15-22. [NEW]
325:85-15-23. [NEW]
325:85-15-24. [NEW]
325:85-15-25. [NEW]
325:85-15-26. [NEW]
325:85-15-27. [NEW]
325:85-15-28. [NEW]
325:85-15-29. [NEW]
325:85-15-33. [NEW]
325:85-15-34. [NEW]
325:85-15-35. [NEW]
325:85-15-36. [NEW]
325:85-15-39. [NEW]
325:85-15-40. [NEW]
325:85-15-42. [NEW]
325:85-15-43. [NEW]
325:85-15-44. [NEW]
325:85-15-45. [NEW]
325:85-15-46. [NEW]
325:85-15-47. [NEW]
325:85-15-48. [NEW]
325:85-15-49. [NEW]
325:85-15-50. [NEW]
325:85-15-51. [NEW]
325:85-15-52. [NEW]
325:85-15-53. [NEW]
325:85-15-54. [NEW]
325:85-15-55. [NEW]
325:85-15-56. [NEW]
325:85-15-57. [NEW]
325:85-15-58. [NEW]
325:85-15-59. [NEW]
325:85-15-60. [NEW]
325:85-15-61. [NEW]
325:85-15-62. [NEW]
325:85-15-63. [NEW]
325:85-15-64. [NEW]
Subchapter 20. Use and Operation Requirements Applicable to Compact Electronic Games and Non-Compact Electronic Games [NEW]
325:85-20-1. [NEW]
325:85-20-2. [NEW]
325:85-20-3. [NEW]
325:85-20-4. [NEW]
325:85-20-5. [NEW]
325:85-20-6. [NEW]
325:85-20-7. [NEW]
325:85-20-8. [NEW]
325:85-20-9. [NEW]
325:85-20-10. [NEW]
325:85-20-11. [NEW]
325:85-20-12. [NEW]
325:85-20-13. [NEW]
Subchapter 21. Accounting System Requirements [NEW]
325:85-21-2. [NEW]
325:85-21-6. [NEW]
325:85-21-8. [NEW]
325:85-21-9. [NEW]
325:85-21-10. [NEW]
325:85-21-11. [NEW]
325:85-21-12. [NEW]
325:85-21-13. [NEW]
325:85-21-17. [NEW]
325:85-21-18. [NEW]
325:85-21-19. [NEW]
325:85-21-21. [NEW]
325:85-21-22. [NEW]
325:85-21-23. [NEW]
325:85-21-24. [NEW]
325:85-21-25. [NEW]
325:85-21-26. [NEW]
325:85-21-27. [NEW]
325:85-21-28. [NEW]
325:85-21-29. [NEW]
325:85-21-30. [NEW]
325:85-21-31. [NEW]
325:85-21-32. [NEW]
Subchapter 25. Transportation, Receipt, Installation and Disposal of Gaming Machines [NEW]
325:85-25-1. [NEW]
325:85-25-2. [NEW]
325:85-25-3. [NEW]
325:85-25-4. [NEW]
325:85-25-5. [NEW]
325:85-25-6. [NEW]
325:85-25-7. [NEW]
Subchapter 27. Requirements for Audits Performed by Gaming Agents [NEW]
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Subchapter 5. Electronic Amusement Games Specifications [NEW]
325:85-5-1. [NEW]
Subchapter 7. Electronic Bonanza-Style Bingo Games Specifications [NEW]
325:85-7-1. [NEW]
Subchapter 9. Electronic Instant Bingo Games Specifications [NEW]
325:85-9-1. [NEW]
Subchapter 11. Required Certification and Approval of All Types of Authorized Games, Gaming Machines or Devices and Components Thereof [NEW]
325:85-11-1. [NEW]
325:85-11-5. [NEW]
325:85-11-9. [NEW]
325:85-11-11. [NEW] (superseded by 325:85-11-8.1)
325:85-11-12. [NEW]
Subchapter 13. Cashless Transactions [NEW]
325:85-13-1. [NEW]
325:85-13-4. [NEW]
325:85-13-5. [NEW]
325:85-13-6. [NEW]
325:85-13-7. [NEW]
325:85-13-8. [NEW]
Subchapter 15. Player Terminal General Specifications and Use and Operation Requirements [NEW]
325:85-15-1. [NEW]
325:85-15-3. [NEW]
325:85-15-4. [NEW]
325:85-15-8. [NEW]
325:85-15-9. [NEW]
325:85-15-10. [NEW]
325:85-15-11. [NEW]
325:85-15-12. [NEW]
325:85-15-13. [NEW]
325:85-15-14. [NEW]
325:85-15-15. [NEW]
325:85-15-16. [NEW]
325:85-15-17. [NEW]
325:85-15-18. [NEW]
325:85-15-19. [NEW]
325:85-15-20. [NEW]
325:85-15-21. [NEW]
325:85-15-22. [NEW]
325:85-15-23. [NEW]
325:85-15-24. [NEW]
325:85-15-25. [NEW]
325:85-15-26. [NEW]
325:85-15-27. [NEW]
325:85-15-28. [NEW]
325:85-15-29. [NEW]
325:85-15-33. [NEW]
325:85-15-34. [NEW]
325:85-15-35. [NEW]
325:85-15-36. [NEW]
325:85-15-39. [NEW]
325:85-15-40. [NEW]
325:85-15-42. [NEW]
325:85-15-43. [NEW]
325:85-15-44. [NEW]
325:85-15-45. [NEW]
325:85-15-46. [NEW]
325:85-15-47. [NEW]
325:85-15-48. [NEW]
325:85-15-49. [NEW]
Subchapter 17. Use Requirements for All Authorized Games [NEW]
325:85-17-1. [NEW] (superseded by 325:85-15-63)
325:85-17-2. [NEW] (superseded by 325:85-15-50)
325:85-17-3. [NEW] (superseded by 325:85-15-51)
325:85-17-6. [NEW] (superseded by 325:85-15-52)
325:85-17-7. [NEW] (superseded by 325:85-15-53)
325:85-17-8. [NEW] (superseded by 325:85-15-54)
325:85-17-9. [NEW] (superseded by 325:85-15-55)
325:85-17-10. [NEW] (superseded by 325:85:15-56)
325:85-17-11. [NEW] (superseded by 325:85-15-57)
325:85-17-12. [NEW] (superseded by 325:85-15-58)
Subchapter 19. Progressive Use and Operation Requirements [NEW]
325:85-19-1. [NEW] (superseded by 325:85-15-59)
325:85-19-2. [NEW] (superseded by 325:85-15-60)
325:85-19-3. [NEW] (superseded by 325:85-15-61)
325:85-19-4. [NEW] (superseded by 325:85-15-62)
Subchapter 21. Accounting System Requirements [NEW]
325:85-21-2. [NEW]
325:85-21-6. [NEW]
325:85-21-8. [NEW]
325:85-21-9. [NEW]
325:85-21-10. [NEW]
325:85-21-11. [NEW]
325:85-21-12. [NEW]
325:85-21-13. [NEW]
325:85-21-17. [NEW]
325:85-21-18. [NEW]
325:85-21-19. [NEW]
325:85-21-21. [NEW]
325:85-21-22. [NEW]
325:85-21-23. [NEW]
325:85-21-24. [NEW]
325:85-21-25. [NEW]
Subchapter 23. Redemption Terminal (Kiosk) Standards and Use Requirements [NEW]
325:85-23-1. [NEW] (superseded by 325:85-21-26)
325:85-23-2. [NEW] (superseded by 325:85-21-27)
325:85-23-3. [NEW] (superseded by 325:85-21-28)
325:85-23-4. [NEW] (superseded by 325:85-21-29)
325:85-23-5. [NEW] (superseded by 325:85-21-30)
325:85-23-6. [NEW] (superseded by 325:85-21-31)
325:85-23-7. [NEW] (superseded by 325:85-21-32)
Subchapter 25. Transportation, Receipt, Installation and Disposal of Gaming Machines or Devices [NEW]
325:85-25-1. [NEW]
325:85-25-2. [NEW]
325:85-25-3. [NEW]
325:85-25-4. [NEW]
325:85-25-5. [NEW]
325:85-25-6. [NEW]
325:85-25-7. [NEW]
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INCORPORATIONS BY REFERENCE:
Not Applicable
FINDING OF EMERGENCY:
The Oklahoma Horse Racing Commission finds that compelling, extraordinary circumstances necessitate the emergency adoption of rules to OAC 325 *Rules for Racetrack Gaming*. The reasons for this finding are as follows: 1. In the time since approval of the original rules, some of the stakeholders - the racetracks and the horsemen's representative organizations - have contended that these original rules placed the racetracks and horsemen at a competitive disadvantage to Tribal casinos for the following reasons: a) the rules did not completely follow the language in the Act; b) further, the rules

did not adequately address all of the authorized games; c) the rules introduced a stricter regulation that restricted the operation of the games, resulting in seemingly unnecessary regulation and language not found in the Act; and d) the original rules also set criteria and specifications regarding the functioning of the games that unfortunately did not allow for technological advances in the evolution of the authorized games. 2. These rules are being submitted under emergency rulemaking so that, if approved by Governor Henry, the rules can become effective May 11, 2006 - approximately 45 days sooner - rather than waiting for approval under permanent rulemaking which is projected to occur June 25, 2006. This difference in time can make a decidedly positive financial impact because the new rules are expected to bring more gaming dollars which, besides the increased assistance to education and more game options for the gaming participant, will directly impact a number of the stakeholders in the horse racing industry - the racetracks and the horsemen. 3. As such, it is in the best interest of the horse racing industry that the new rules for authorized gaming, which is expected to enhance horsemen's purses, begin as soon as practical. Further, It is in the best interest of the State as a whole that increased State revenues from the new rules for authorized gaming at the racetracks begin to accrue as soon as practical before the promulgation of the rules under permanent rulemaking. Therefore, **the Commission finds that a compelling public interest requires the adoption of emergency rules implementing the new rules for authorized gaming permitted under the State-Tribal Gaming Act.**

ANALYSIS:

On December 15, 2005, Chairman Calvert appointed an Ad Hoc Committee on Gaming Rules which addressed the concerns of some of the stakeholders [shown in detail under Findings of Emergency, Item 1, on previous page]. Membership on the Ad Hoc Committee included some of the key stakeholders. The Committee, chaired by Chairman Randy Calvert, consisted of three (3) Commissioners of the Oklahoma Horse Racing Commission [Commissioners Randy Calvert, Roger Cole and Patrick Grimmett], the Executive Director of the Horse Racing Commission [Constantin A. Rieger], the Commission Counsel [Neal Leader], one (1) representative of the Oklahoma Quarter Horse Racing Association [Debbie Schauf], one (1) representative of the Thoroughbred Racing Association of Oklahoma [Joe Lucas], racetrack representatives [Scott Daruty for Remington Park, Bob Rabon for Blue Ribbon Downs and Mark Enterline for Will Rogers Downs], Oklahoma Thoroughbred Association [R.D. Logan] and John Smicklas [Thoroughbred Owner]. Through a number of long meetings from December, 2005 through March, 2006, new rules were drafted. It was the Ad Hoc Committee on Gaming Rules' recommendation to the Horse Racing Commission on March 23, 2006 that the following rules be adopted under emergency rulemaking. The Commission then took action to adopt the emergency rules.

CONTACT PERSON:

Bonnie Morris, (405) 943-6472

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 7.5. O.S., SECTION 253(D):

SUBCHAPTER 1. GENERAL PROVISIONS

325:85-1-1. Purpose

The objective of this chapter is to provide for the regulation, implementation and enforcement of provisions of the Act that pertain to the operation of Authorized Games by Racetrack Gaming Operator Licensees.

325:85-1-2. Definitions

Unless otherwise defined below, terms used in this chapter have the same meanings as set forth in the State-Tribal Gaming Act.

"Act" means the State-Tribal Gaming Act enacted by the people with passage of State Question 712.

"Authorized games" means Electronic Amusement Games as defined in the Act, Electronic Bonanza-Style Bingo Games as defined in the Act, Electronic Instant Bingo Games as defined in the Act, Compact Electronic Games as defined in these Rules, and Non-Compact Electronic Games as defined in these Rules.

"Central computer" means a computer or computers to which Player Terminals may be linked to allow competition in Electronic Bonanza-Style Bingo Games;.

"Commission" means the Oklahoma Horse Racing Commission.

"Compact" means a Model Compact or any other tribal-state compact entered into between the State of Oklahoma and a federally recognized Indian tribe in accordance with the Indian Gaming Regulatory Act, and which has been approved by the United States Secretary of the Interior, as evidenced by publication of the approval in the Federal Register.

"Compact Electronic Game" means any Gaming Machine allowed by Oklahoma law that a federally recognized Indian tribe in Oklahoma is authorized to use by virtue of a Compact.

"Component" means a part of a Gaming Machine that is necessary for the proper operation and essential function of the Gaming Machine, including but not limited to a hopper, coin acceptor, microprocessor and related circuitry, Program Storage Device, bill acceptor, cashless system, progressive system, monitoring system, meter, and any other parts the Commission determines are Components; a Component is necessary for the proper operation and essential function of a Gaming Machine if it affects, directly or indirectly, the Gaming Machine's operation, game outcome, security, record-keeping, or communication with the central monitoring system; parts such as light bulbs, buttons, wires, decorative glass, fuses, batteries, handles, springs, brackets, and locks are not Components if they do not directly or indirectly affect the Gaming Machine's operation, game outcome, security, record-keeping, or communication with the central monitoring system.

"Control," when used as a noun, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or to exercise significant influence over management and policies due to financial investment, assumption of debts or expenses, or other monetary or non-monetary considerations extended to the applicant or Licensee; when used as a verb, "Control" means to exert, directly or indirectly, such power, or to be in a position to exert such power.

"Electronic Amusement Game" means a game that is played in an electronic environment in which a player's performance and opportunity for success can be improved by skill that conforms to the Standards set forth in the Act.

"Electronic Bonanza-Style Bingo Game" means a game played in an electronic environment in which some or all of the numbers or symbols are drawn or electronically determined before the bingo cards for that game are sold that conforms to the Standards set forth in the Act.

"Electronic Instant Bingo Game" means a game played in an electronic environment in which a player wins if his or her electronic instant bingo card contains a combination of numbers or symbols that was designated in advance of the game as a winning combination. There may be multiple winning combinations in each game and multiple winning cards.

"Executive director" means the executive director of the Commission.

"Gaming agent" means a Commission employee trained in machine gaming, responsible for on-site enforcement of the Act and these Rules and other regulatory responsibilities as assigned by the Executive Director.

"Game play credits" means a method of representing value obtained from the exchange of cash or cash equivalents, or earned as a prize, in connection with the play of Authorized Games. Game Play Credits may be redeemed for cash or a cash equivalent.

"Gaming facility" means that area within an Organization Licensee's Racetrack Premises approved by the Commission that has been set aside for the use of Authorized Games and related activities and access to which is limited to patrons 18 years of age or older.

"Gaming machine" means a contrivance designed primarily for gambling purposes which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, or any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

"Independent testing laboratory" means a laboratory with a national reputation for honesty, independence, competence and timeliness that is demonstrably competent and qualified to scientifically test and evaluate devices for compliance with the Act and to otherwise perform the functions assigned to it in the Act. An Independent Testing Laboratory shall not be owned or Controlled by an Organization Licensee, an Indian tribe, the State, or any Manufacturer, supplier or operator of Gaming Machines. The use of an Independent Testing Laboratory for any purpose related to the operation of Authorized Games by an Organization Licensee under the Act shall be made from a list of one or more laboratories approved by the Commission.

"Manufacturer" means a Person who manufactures, fabricates, assembles, produces, programs, refurbishes, or makes Modification to any Gaming Machine or Component thereof, or associated Program Storage Device for sale, lease, distribution, use or play by a Racetrack Gaming Operator Licensee in the State of Oklahoma.

"Model Compact" means a tribal-state compact between the State of Oklahoma and an Indian tribe entered into pursuant to 3A., O.S., § 280 and 281.

"Modification" means a change or alteration in an approved Gaming Machine or Component thereof that affects the manner or mode of play (including the percentage paid by the Gaming Machine), as well as a change in control or graphics programs. "Modification" does not include a conversion from one approved mode of play to another approved mode of play, replacement of one game for another approved game, replacement of one Component with another pre-approved Component, or the rebuilding of a previously approved Gaming Machine with pre-approved Components.

"Non-Compact Electronic Game" means any Gaming Machine that a federally recognized Indian tribe in Oklahoma is lawfully permitted to operate without a Compact under the Indian Gaming Regulatory Act. In determining whether a Gaming Machine qualifies as a Non-Compact Electronic Game, it shall be presumed that an Indian tribe is lawfully permitted to operate such Gaming Machine if such Indian tribe is operating such Gaming Machine within the State of Oklahoma and each of the following is true: (a) the National Indian Gaming Commission has not issued a Notice of Violation related to the unlawfulness of the Gaming Machine, instituted a formal action against the Indian tribe seeking to cause the Indian tribe to cease operating the Gaming Machine due to the unlawfulness of such Gaming Machine, issued an Order of Closure related to the Gaming Machine due to the unlawfulness of such Gaming Machine, nor assessed a civil fine related to the unlawfulness of the Gaming Machine; and (b) the Oklahoma Office of State Finance has not sent formal written notice to the Indian Tribe requesting that the Indian tribe cease operating the Gaming Machine due to the unlawfulness of such Gaming Machine. This presumption is a rebuttable presumption, which shall be deemed rebutted if substantial information to the contrary is presented or available to the Commission or its Executive Director.

"Organization license" means a license issued by the Commission which authorizes the licensee to conduct a race meeting in Oklahoma and accept pari-mutuel wagers on the outcome of live and simulcast horse racing.

"Organization licensee" means any Person receiving an Organization License issued by the Commission.

"Person" means any individual, partnership, corporation, or other association or entity.

"Player Terminals" means electronic terminals housed in cabinets with input devices and video screens or electromechanical displays on which players play Authorized Games.

"Program storage device" means an EPROM (Erasable Programmable Read-Only Memory), hard drive, DVD, CD-ROM or other storage medium which is used for storing program instructions in a Gaming Machine, system or other associated equipment.

"Racetrack gaming operator license" means a license issued by the Commission which authorizes an Organization Licensee to conduct Authorized under the regulation, implementation and enforcement of the Commission.

"Racetrack gaming operator licensee" means any Organization Licensee which has been issued a Racetrack Gaming Operator License by the Commission.

"Racetrack premises" means the property that is owned or leased by the Organization Licensee that is used for racetrack purposes.

"Rules" means the Commission's *Rules for Racetrack Gaming*.

"Standards" means the descriptions and specifications of Electronic Amusement Games, Electronic Bonanza-Style Bingo Games, and Electronic Instant Bingo Games, or Components thereof, as set forth in the Act, including technical specifications for Component parts, requirements for cashless transaction systems, software tools for security and audit purposes, and procedures for operation of such games.

"State" means the State of Oklahoma.

"This Title" means Title 325 of the Oklahoma Administrative Code.

"Use and operation requirements" means (a) with respect to Electronic Amusement Games, Electronic Bonanza-Style Bingo Games and Electronic Instant Bingo Games, the use and operation requirements set forth in Subchapter 17, and (b) with respect to Compact Electronic Games and Non-Compact Electronic Games, the use and operation requirements set forth in Subchapter 19.

SUBCHAPTER 3. AUTHORIZED GAMES

325:85-3-1. Types of Authorized Games

Subject to all provisions of the Act, including, but not limited to, limitations on the number of Player Terminals, a Racetrack Gaming Operator Licensee is authorized to conduct the following types of machine gaming, generally referred to as "Authorized Games , are":

(1) "Electronic Amusement Game" as defined in the Act.

(2) "Electronic Bonanza-Style Bingo Game" as defined in the Act.

(3) "Electronic Instant Bingo Game" as defined in the Act.

(4) "Compact Electronic Game" as defined in these Rules.

(5) "Non-Compact Electronic Game" as defined in these Rules.

325:85-3-2. Waiver by Commission

The Commission shall have the power to waive any requirement set forth in these Rules (including without limitation the rules set forth in Chapters 80, 85 and 90) if the Commission finds that such waiver is in the best interest of the public and the horse racing industry of the State of Oklahoma. The Executive Director shall have the power to waive any Use and Operation Requirements if the Executive Director finds such waiver is in the best interest of the public and the horse racing industry of the State of Oklahoma.

SUBCHAPTER 5. ELECTRONIC AMUSEMENT GAMES SPECIFICATIONS

325:85-5-1. Required specifications

Electronic Amusement Games must meet the following specifications:

(1) Electronic Amusement Games shall be played through the use of Player Terminals which, following the payment of a fee, present games in which the player can win prizes in a format in which a player's performance can be improved by skill.

(2) Electronic Amusement Games are games in which a player's performance can be improved by skill. Each Player Terminal employed in an Electronic Amusement Game shall only offer games that meet the following minimum standards:

(A) Each Electronic Amusement Game must require decisions or actions by players that could affect the result of the game;

(B) No auto-hold, "smart-hold," or similar feature shall be employed which permits the Player Terminal to automatically determine optimum play or make decisions for players;

(C) Each Player Terminal must prominently display either on the Player Terminal or on a help screen:

(i) the rules of the game and instructions and other information regarding the concept of the game so that a novice player can understand how to improve his or her performance, and

(ii) possible winning combinations based on the amounts paid to play the game and the other information required in this section. Such information may not be incomplete, confusing or misleading;

(D) In Electronic Amusement Games in which players are competing against others, the players shall be informed about whether and how winning prizes will be shared; and

(E) No Electronic Amusement Game shall base its outcome on the number or ratio of prior wins to prior losses or any other factor relating to the profit or revenues retained by the operator from prior plays of the game.

(3) Following any play on a Player Terminal, data shall be maintained electronically and shall be viewable either electronically or by printed report. Such data shall provide basic information regarding the amount paid in, the game played, the result, and the prize awarded, if any.

(4) Player Terminals must be operated either through the insertion of coins or currency, cash voucher, or through the use of a cashless transaction system. The available games must be displayed on the Player Terminal's video screen or otherwise prominently displayed on the Player Terminal. The rules of the game also must be displayed either prominently on the Player Terminal or on a help screen, and include sufficient information to alert novice players on the concept of the game so that a novice player can understand how to improve his or her performance. Depending on the game selected, the player must physically interact with the screen (through touch screen technology) or by depressing or activating buttons or other input devices, to cause an intended result.

(5) Following play on a Player Terminal, the result shall be displayed and prizes awarded. Prizes may be

dispensed in the form of cash, coin, cash voucher, merchandise or through a cashless transaction system.

(6) Every play of the game shall be recorded, monitored and regulated to ensure full accountability and integrity of play, in accordance with the provisions of the Act and the Use and Operation Requirements.

(7) For auditing and security purposes, any Electronic Amusement Game shall include and have available a secure software tool that conforms to the Use and Operation Requirements to audit the software of each Electronic Amusement Game. Such tool shall be used only during authorized audits of Electronic Amusement Games, or in cases of player disputes.

SUBCHAPTER 7. ELECTRONIC BONANZA-STYLE BINGO GAMES SPECIFICATIONS

325:85-7-1. Required specifications [273 of Title 3A]

Electronic Bonanza-Style Bingo Games must meet the following specifications:

(1) Electronic Bonanza-Style Bingo Games authorized by the Act shall only be conducted using a system which uses linked Player Terminals which allow players to purchase and play electronic bonanza-style bingo cards. Players compete, following the payment of a fee, to be the first player to cover a previously designated bingo pattern using a set of numbers or symbols at least some of which were drawn or electronically determined before the sale of bingo cards began. The first player to cover the game-winning pattern wins the game-winning prize. Interim and consolation prizes also may be awarded.

(2) Player Terminals must be operated either through the insertion of coins or currency, cash voucher, or through the use of a cashless transaction system. The available games must be displayed on the Player Terminal's video screen or otherwise prominently displayed on the Player Terminal. The rules of the game also must be displayed either prominently on the Player Terminal or a help screen.

(3) After the player purchases a bingo card, the Player Terminal must cover any numbers or symbols on the player's bingo card that match numbers or symbols previously drawn or electronically determined for that game.

(4) Although the results of the bingo game may be shown using entertaining video and/or mechanical displays, the player have the option to view the electronic bingo card and current ball draw on the video screen of the Player Terminal.

(5) Following play on a Player Terminal, the result shall be displayed and prizes awarded. Prizes may be dispensed in the form of cash, coin, cash voucher, merchandise or through a cashless transaction system.

SUBCHAPTER 9. ELECTRONIC INSTANT BINGO GAMES SPECIFICATIONS

325:85-9-1. Required specifications [274 of Title 3A]

Electronic Instant Bingo Games must meet the following specifications:

(1) Electronic Instant Bingo Games authorized by the Act shall only use Player Terminals which allow players to purchase and play electronic instant bingo cards. Players receive, after the payment of a fee, an electronic instant bingo card. A player wins if his or her card contains a combination of numbers or symbols that was designated in advance of the game as a winning combination. There may be multiple winning combinations in each game and multiple winning cards.

(2) Player Terminals must be operated either through the insertion of coins or currency, cash voucher, or through the use of a cashless transaction system. The available games must be displayed on the Player Terminal's video screen or otherwise prominently displayed on the Player Terminal. The rules of the game also must be displayed either prominently on the Player Terminal or on a help screen.

(3) After the player purchases an electronic instant bingo card, the combination of numbers or symbols on that card is revealed to the player.

(4) The results of the electronic instant bingo card may be shown to the player using entertaining video and/or mechanical displays.

(5) Following play on a Player Terminal, the result must be displayed and prizes awarded. Prizes may be dispensed in the form of cash, coin, cash voucher, merchandise or through a cashless transaction system.

SUBCHAPTER 11. REQUIRED CERTIFICATION AND APPROVAL OF ELECTRONIC AMUSEMENT GAMES, ELECTRONIC BONANZA-STYLE BINGO GAMES AND ELECTRONIC INSTANT BINGO GAMES

325:85-11-1. Certification by Independent Testing Laboratory and Commission approval required

(a) Before any Electronic Amusement Game, Electronic Bonanza-Style Bingo Game, or Electronic Instant Bingo Game, or any Component thereof, may be placed into operation by a Racetrack Gaming Operator Licensee, the Racetrack Gaming Operator Licensee shall first have obtained and submitted to the Commission or the Executive Director a written certification from the Manufacturer that upon installation, each such game or Component thereof:

(1) Conforms to the Standards contained in Act and to the Use and Operation Requirements all as certified by an Independent Testing Laboratory;

(2) Can be used with Components manufactured by others in accordance with open architectural and communication standards, platform and protocols approved by the Commission that promotes competition among Manufacturers and Vendors of equipment and Components for such games; and

(3) Operates in accordance with the Standards contained in the Act and with the Use and Operation Requirements.

(b) Further, before any Electronic Amusement Game, Electronic Bonanza-Style Bingo Game, or Electronic Instant Bingo Game, or Component thereof, may be placed into operation, Commission or Executive Director approval is required. The Commission or Executive Director shall review and approve an Electronic Amusement Game, Electronic Bonanza-Style Bingo Game, or Electronic Instant Bingo Game, or any Component thereof, based solely on (a) the Standards, subject to modification in accordance with subsection B of 268 of Title 3A, (b) the Use and Operation Requirements, and (c) the certification received from the Independent Testing Laboratory.

325:85-11-1.1. Certification reciprocity

A Racetrack Gaming Operator Licensee may rely on any certification of an Electronic Amusement Game, Electronic Bonanza-Style Bingo Game, or Electronic Instant Bingo Game, or Component thereof, previously approved by the Commission for any other Racetrack Gaming Operator Licensee. The Racetrack Gaming Operator Licensee may also rely on any certification of an Electronic Amusement Game, Electronic Bonanza-Style Bingo Game, or Electronic Instant Bingo Game, or Component thereof, obtained by any Indian tribe operating under a Model Compact and approved pursuant to the provisions of the Act.

325:85-11-5. Submission of prototype for testing by Independent Testing Laboratory required

(a) A prototype of an Electronic Amusement Game, Electronic Bonanza-Style Bingo Game, or Electronic Instant Bingo Game, or any Component thereof, which a Racetrack Gaming Operator Licensee intends to offer for play shall be tested and certified by an Independent Testing Laboratory as meeting the Standards contained in the Act and the Use and Operation Requirements.

(b) A Racetrack Gaming Operator Licensee shall provide, or require that the Manufacturer or Vendor provide to the Independent Testing Laboratory a written request as to each game for which certification is sought, any fees required to be deposited with the Independent Testing Laboratory, and, on a confidential basis: two (2) copies of the game illustrations, schematics, block diagrams, circuit analyses, technical and enterprise manuals, program object and source codes, hexadecimal dumps (the compiled computer program represented in base 16 format), and any other information requested by the Independent Testing Laboratory. The Racetrack Gaming Operator Licensee shall send copies of the requests for certification to the Commission when made and shall make all materials submitted to the Independent Testing Laboratory available to the Commission upon request. Any materials so submitted which are designated by the Manufacturer or Vendor as proprietary shall remain confidential and shall not be subject to the disclosure requirements of the Oklahoma Open Records Act.

(c) If requested by the Independent Testing Laboratory, the Racetrack Gaming Operator Licensee shall require the Manufacturer or Vendor to transport not more than two (2) working models of the game for which certification is sought to a location designated by the Independent Testing Laboratory for testing, examination, and/or analysis. Neither the State nor the Independent Testing Laboratory shall be liable for any costs associated with the transportation, testing, examination, or analysis, including any damage to the Components of the game. If requested by the Independent Testing Laboratory, the Racetrack Gaming Operator Licensee shall require the Manufacturer or Vendor to provide specialized equipment or the services of an independent technical expert to assist with the testing, examination, and/or analysis. At the conclusion of each test, the Independent Testing Laboratory shall provide to the Commission a report that contains findings, conclusions and a certification that the game conforms or fails to conform to the Standards contained in the Act. If the Independent Testing Laboratory determines that the game fails to conform to such Standards, and if Modifications can be made which would bring the game into compliance, the report may contain recommendations for such Modifications. The Independent Testing Laboratory shall retest for compliance following such Modifications. The Independent Testing Laboratory shall report all findings and conclusions to the Racetrack Gaming Operator Licensee, the Manufacturer/Vendor and the Commission provided that at any time prior to issuance of a final report by the Independent Testing Laboratory, the Racetrack Gaming Operator Licensee may instruct it to terminate the process,, in which case no report shall be made.

325:85-11-8.1. Procedures for Commission approval of Gaming Machines and Components

(a) The Commission, through the Executive Director, shall review and approve a proposed Electronic Amusement Game, Electronic Bonanza-Style Bingo Game, or Electronic Instant Bingo Game, or any Component thereof, based solely on (1) the Standards, subject to modification in accordance with subsection B of 268 of Title 3A, (2) the Use and Operation Requirements, and (3) the report and certification received from the Independent Testing Laboratory. The Commission's review shall be completed within twenty (20) days of receipt of: (1) the report and certification from the Independent Testing Laboratory, or (2) evidence that the Gaming Machine or Component thereof is entitled to reciprocity pursuant to Section 325:85-11-2. With respect to Modifications to previously approved games, the Commission's review shall be completed within ten (10) days of the receipt of the certification of the Modification.

(b) The game shall be deemed approved if the Executive Director does not disapprove the proposed game within the twenty (20) day or ten (10) day period, as may be applicable. If within the twenty (20) day or ten (10) day periods described in this section, the Executive Director gives notice to the Racetrack Gaming Operator Licensee that it has disapproved a proposed game, such game shall not be placed in any Gaming Facility or, if already there, shall be removed or taken offline for play, to allow time for an appeal to be made in accordance

with the applicable appeal process if an appeal is sought. The sole issue in the appeal process shall be whether the game, or a Component thereof, meets the Standards and the Use and Operation Requirements. The Executive Director and Commission staff shall have the authority to discuss the Independent Testing Laboratory's report with representatives of the Independent Testing Laboratory without any cost to the Commission and to physically review any game as part of the applicable appeal process.

325:85-11-9. Submitting Modifications to a previously certified item

No Modification to any Electronic Amusement Game, Electronic Bonanza-Style Bingo Game, or Electronic Instant Bingo Game, or Component thereof, may be made by a Racetrack Gaming Operator Licensee after it is tested, certified and approved, without certification of the Modification by the Independent Testing Laboratory and approval thereof by the Commission, through the Executive Director. In situations where immediate Modifications are necessary to preserve the integrity of a game that has been operating pursuant to an approval obtained under this section, the Independent Testing Laboratory may issue an emergency certification of the Modification based on information provided to it by the Racetrack Gaming Operator Licensee or obtained independently, so long as such certification must be issued immediately to preserve the integrity of the game, and such certification would likely be issued under ordinary circumstances. Such emergency certifications shall be deemed to be temporarily approved by the Commission and remain in effect until the Commission takes final action under this section on the certification.

325:85-11-12. Procedures for appeal of decision disapproving Gaming Machines or Components

Appeals from a disapproval by the Executive Director shall be made to the District Court in accordance with the Oklahoma Administrative Procedures Act.

SUBCHAPTER 12. REQUIRED CERTIFICATION AND VERIFICATION OF COMPACT ELECTRONIC GAMES AND NON-COMPACT ELECTRONIC GAMES

325:85-12-1. Certification by Independent Testing Laboratory and Commission approval required

(a) Before any Compact Electronic Game or Non-Compact Electronic Game, or Component thereof, may be placed into operation by a Racetrack Gaming Operator Licensee, the Racetrack Gaming Operator Licensee shall first have obtained and submitted to the Commission or the Executive Director a written certification from the Manufacturer containing:

(1) A statement that upon installation, such game or Component thereof, is the same as a game that is being operated by a federally recognized Indian tribe in Oklahoma;

(2) A statement that such game conforms to the Use and Operation Requirements, as certified by an Independent Testing Laboratory;

(3) The name of the Indian tribe referred to in the preceding clause, and the location of the Indian tribe's facility within the State of Oklahoma where such game is being operated;

(4) A statement as to whether such game is being operated pursuant to a Compact, and if so including a copy of such Compact; and

(5) If such game is being operated pursuant to a Compact and if such Compact requires that the game be certified by a testing laboratory, a copy of the certificate required by the Compact (it being acknowledged that the testing laboratory preparing such certificate must meet the qualifications, if any, contained in the Compact).

(b) Upon receipt of the certification, the Commission or Executive Director shall review and approve a proposed Compact Electronic Game or Non-Compact Electronic Game, or Component thereof, shall include consideration of the following: (a) the certification of the Manufacturer that the game is the same as a game that is being operated by a federally recognized Indian tribe in Oklahoma, (b) the certification of the Independent Testing Laboratory that such game conforms to the Use and Operation Requirements, and (c) if such game is being operated pursuant to a Compact and if such Compact requires that the game be certified by a testing laboratory, the Commission's or Executive Director's receipt of a copy of the certificate required by the Compact (it being acknowledged that the testing laboratory preparing such certificate must meet the qualifications, if any, contained in the Compact).

325:85-12-2. Certification reciprocity

A Racetrack Gaming Operator Licensee may rely on any certification of a Compact Electronic Game or Non-Compact Electronic Game, or Component thereof, previously approved by the Commission for any other Racetrack Gaming Operator Licensee. The Racetrack Gaming Operator Licensee may also rely on any certification of a Compact Electronic Game or Non-Compact Electronic Game, or Component thereof, obtained by an Indian tribe and approved pursuant to the provisions of the Act.

325:85-12-3. Submission of Prototype for testing by Independent Testing Laboratory required

(a) A prototype of a Compact Electronic Game or Non-Compact Electronic Game, or Component thereof, which a Racetrack Gaming Operator Licensee intends to offer for play shall be tested and certified by an Independent Testing as conforming to the Use and Operation Requirements.

(b) A Racetrack Gaming Operator Licensee shall provide, or require that the Manufacturer or Vendor provide, to the Independent Testing Laboratory a written request as to each game

for which certification is sought, any fees required to be deposited with the Independent Testing Laboratory, and, on a confidential basis, all information requested by the Independent Testing Laboratory in order to make such a determination. The Racetrack Gaming Operator Licensee shall send copies of the requests for certification to the Commission when made and shall make all materials submitted to the Independent Testing Laboratory available to the Commission upon request. Any materials so submitted which are designated by the Manufacturer or Vendor as proprietary shall remain confidential and shall not be subject to the disclosure requirements of the Oklahoma Open Records Act.

(c) If requested by the Independent Testing Laboratory, the Racetrack Gaming Operator Licensee shall require the Manufacturer or Vendor to transport not more than two (2) working models of the game for which certification is sought to a location designated by the Independent Testing Laboratory for testing, examination, and/or analysis. Neither the State nor the Independent Testing Laboratory shall be liable for any costs associated with the transportation, testing, examination, or analysis, including any damage to the Components of the game. If requested by the Independent Testing Laboratory, the Racetrack Gaming Operator Licensee shall require the Manufacturer or Vendor to provide specialized equipment or the services of an independent technical expert to assist with the testing, examination, and/or analysis. At the conclusion of each test, the Independent Testing Laboratory shall provide to the Commission a report that contains findings, conclusions and a certification that the game conforms or fails to conform to the Use and Operation Requirements. If the Independent Testing Laboratory determines that the game fails to satisfy such requirements, and if Modifications can be made which would bring the game into compliance, the report may contain recommendations for such Modifications. The Independent Testing Laboratory shall retest for compliance following such Modifications. The Independent Testing Laboratory shall report all findings and conclusions to the Racetrack Gaming Operator Licensee, the Manufacturer/Vendor and the Commission, provided that at any time prior to issuance of a final report by the Independent Testing Laboratory, the Racetrack Gaming Operator Licensee may instruct it to terminate the process, in which case no report shall be made.

325:85-12-4. Procedures for Commission approval of Gaming Machines and Components

(a) The Commission, through the Executive Director, shall review and approve a proposed Compact Electronic Game or Non-Compact Electronic Game, or Component thereof, based solely on the reports and certifications received from the Manufacturer and the Independent Testing Laboratory, and if such game is being operated pursuant to a Compact and if such Compact requires that the game be certified by a testing laboratory, the Commission's or Executive Director's receipt of a copy of the certificate required by the Compact (it being acknowledged that the testing laboratory preparing such certificate must meet the qualifications, if any, contained in the Compact). The Commission's review shall be completed within twenty (20) days of receipt of: (1) the reports and certifications from the Manufacturer and the Independent Testing Laboratory, or (2) evidence that the Gaming Machine or Component thereof is entitled to reciprocity pursuant to Section 325:85-13-2. With respect to Modifications to previously verified games, the Commission's review shall be completed within ten (10) days of the receipt of the certification of the Modification.

(b) The game shall be deemed approved if the Executive Director does not disapprove the proposed game within the twenty (20) day or ten (10) day period, as may be applicable. If within the twenty (20) day or ten (10) day periods described in this section, the Executive Director gives notice to the Racetrack Gaming Operator Licensee that it has disapproved a proposed game, such game shall not be placed in any Gaming Facility or, if already there, shall be removed or taken offline for play, to allow time for an appeal to be made in accordance with the applicable appeal process if an appeal is sought. The sole issue in the appeal process shall be whether the game, or a Component thereof, is the same as a game that is being operated by a federally recognized Indian tribe in Oklahoma and conforms to the Use and Operation Requirements. The Executive Director and Commission staff shall have the authority to discuss the Independent Testing Laboratory's report with representatives of the Independent Testing Laboratory without any cost to the Commission and to physically review any game as part of the applicable appeal process.

325:85-12-5. Submitting Modifications to a previously certified item

No Modification to any Compact Electronic Game or Non-Compact Electronic Game, or Component thereof, may be made by a Racetrack Gaming Operator Licensee after it is tested, certified and approved, without certification of the Modification by the Manufacturer (stating that the game as modified is the same as a game being operated by a federally recognized Indian tribe in Oklahoma) and by the Independent Testing Laboratory (stating that the game conforms to the Use and Operation Requirements) and approval thereof by the Commission, through the Executive Director. In situations where immediate Modifications are necessary to preserve the integrity of a game that has been operating pursuant to an approval obtained under this section, the Independent Testing Laboratory may issue an emergency certification of the Modification based on information provided to it by the Racetrack Gaming Operator Licensee or obtained independently, so long as such certification must be issued immediately to preserve the integrity of the game, and such certification would likely be issued under ordinary circumstances. Such emergency certifications shall be deemed to be temporarily approved by the Commission and remain in effect until the Commission takes final action under this section on the certification.

325:85-12-6. Procedures for appeal of decision disapproving Gaming Machines or Components

Appeals from a disapproval by the Executive Director shall be made to the District Court in accordance with the Oklahoma Administrative Procedures Act.

SUBCHAPTER 13. CASHLESS TRANSACTIONS

325:85-13-1. General cashless transaction requirements [277 of Title 3A]

(a) The following standards shall be met in connection with any cashless transaction system:

(1) All player account information must be stored on at least two (2) separate nonvolatile media;

(2) An audit file must be kept of all financial transactions against the account. This file must be stored in at least two (2) separate nonvolatile media, and be accessible for purposes of audit and disputes resolution to authorized individuals. This file must be available on-line for a minimum of thirty (30) days, after which it must be available off-line for a minimum of one hundred eighty (180) days;

(3) Access controls must be in place to guarantee that unauthorized individuals will not have access to account information or history;

(4) Passwords or personal identification numbers (PINs), if used, must be protected from unauthorized access;

(5) All means for communicating information within the system shall conform to the Standards and the Use and Operation Requirements;

(6) Player accounts shall follow accounting procedures which are designed to verify and protect the accurate recording of all player transactions;

(7) Any card or other tangible instrument issued to a player for the purpose of using the cashless transaction system shall bear on its face a control or inventory number unique to that instrument;

(8) Encoded bearer instruments printed or magnetic may include coupons and other items distributed or sold for game play, promotional, advertising or other purposes, but may not include cash. Such instruments must be in electronically readable form in addition to having unique identification information printed on the instrument face. The daily and monthly reporting must include with respect to such instruments:

(A) cash converted to Game Play Credits,

(B) outstanding unredeemed balance,

(C) Game Play Credits converted to cash,

(D) Game Play Credits used, and

(E) Game Play Credits won;

(9) All customer accounts or instruments must have a redemption period of at least fourteen (14) days; and

(10) No ATM card, financial institution debit card or credit card shall be used as part of any cashless transaction system.

(b) Any "smart card" system which the licensee intends to implement as part of the cashless transaction system shall be tested by an Independent Testing Laboratory approved by the Commission to ensure the integrity of player funds. Any smart card must store on the card or on the system using the card an audit trail of the last ten (10) transactions involving the use of the card. Each transaction record must include, at a minimum, the type of transaction, the amount of the transaction, the date of the transaction, the time of the transaction, and the identification of the Player Terminal or cashier terminal or other points of cash exchange where the transaction occurred. The minimum daily and monthly reporting for smart card activity must include:

(1) Total of cash transferred to smart cards;

(2) Total of smart card amounts transferred to cash;

(3) Total of smart card amounts transferred to Game Play Credits;

(4) Total of Game Play Credits transferred to smart card amounts; and

(5) Total unredeemed smart card balance.

(c) Systems shall be permissible that allow player tracking, maintenance tracking, and other gaming management or marketing functions. These systems shall not interfere with, or in any way affect, the outcome of any game being played or the accuracy of any information or records required to be maintained or reported by the Use and Operation Requirements or applicable law.

325:85-13-4. Security requirements

The communication process used by the Player Terminal and the host system must be robust and stable enough to secure each cashless transaction such that failure event(s) can be identified and logged for subsequent audit and reconciliation.

325:85-13-5. Prevention of unauthorized transactions

Sufficient controls shall be implemented by the host system to ensure that games are prevented from responding to commands for crediting outside of properly authorized cashless transactions (hacking). Sufficient controls must be in place to allow all cashless diagnostic activity that affects the Player Terminal's associated electronic meters to be audited by the Commission and those acting on its behalf.

325:85-13-6. Diagnostic Tests on a Cashless Player Terminal

Sufficient controls must be in place to allow all cashless diagnostic activity that affects the Player Terminal's associated electronic meters to be audited by the Commission and those acting on its behalf.

325:85-13-7. Transaction auditing

The system shall have the ability to produce logs and reports in both electronic form and hard copy for all pending and completed cashless transactions. These logs and reports shall be capable of being filtered by:

(1) Machine number;

(2) Patron account; and
(3) Time/date

325:85-13-8. Financial and player reports

The system shall have the ability to produce the following financial and player reports, both in electronic form and hard copy:

(1) Patron Account Summary and Detail Reports. These reports shall be immediately available to a patron upon request. These reports shall include beginning and ending account balance, transaction information depicting Player Terminal number, amount, and date/time.

(2) Liability Report. This report shall include the previous day's starting value of outstanding cashless liability, aggregate cashless-in and out totals, and ending cashless liability.

(3) Cashless Meter Reconciliation Summary and Detail Reports. These reports shall reconcile each participating Player Terminal's cashless meter(s) against the host system's cashless activity.

(4) Cashier Summary and Detail Reports. These reports shall include patron account, buy-ins and cash-out, amount of transaction, and date and time of transaction.

SUBCHAPTER 15. USE AND OPERATION REQUIREMENTS APPLICABLE TO ELECTRONIC AMUSEMENT GAMES, ELECTRONIC BONANZA-STYLE BINGO GAMES AND ELECTRONIC INSTANT BINGO GAMES

325:85-15-0. Applicability

The Use and Operation Requirements set forth in this Subchapter 17 shall apply only to Electronic Amusement Games, Electronic Bonanza-Style Bingo Games and Electronic Instant Bingo Games. The Use and Operation Requirements set forth in this Subchapter 17 shall not apply to Compact Electronic Games or Non-Compact Electronic Games.

325:85-15-1. General Player Terminal specifications

Player Terminals shall conform to the following standards:

(1) No Player Terminal shall be capable of being used as a stand-alone unit for the purposes of engaging in any game not permitted by the Act;

(2) In addition to a video monitor or other electromechanical display, each Player Terminal may have one or more of the following: a printer, graphics and signage;

(3) Each Player Terminal may have one or more of the following: electronic buttons, touch screen capability, and a mechanical, electromechanical or electronic means of activating the game and providing player input, including a means for making player selections and choices in games;

(4) Each Player Terminal shall have a nonvolatile backup memory or its equivalent, which shall be maintained in a secure compartment on each Player Terminal for the purpose of storing and preserving a redundant set of critical data which has been error checked in accordance with the Act, and which data shall include, at a minimum, the following Player Terminal information:

(A) electronic meters required in the Act;

(B) recall of all wagers and other information associated with the last ten (10) plays, and

(C) error conditions that may have occurred on the Player Terminal;

(5) An on/off switch that controls the electrical current that supplies power to the Player Terminal, which must be located in a secure place that is readily accessible within the interior of the Player Terminal;

(6) The operation of each Player Terminal must not be adversely compromised or affected by static discharge, liquid spills, or electromagnetic interference;

(7) A Player Terminal must have electronic accounting meters which have tally totals to a minimum of seven (7) digits and be capable of rolling over when the maximum value of at least 9,999,999 is reached. The Player Terminal must provide a means for on-demand display of the electronic meters via a key switch or other secure method on the exterior of the machine. Electronic meters on each Player Terminal for each of the following data categories are required:

(A) credits, or equivalent monetary units, deposited on a cumulative basis on that Player Terminal,

(B) if a Player Terminal offers more than one Electronic Bonanza-Style Bingo Game or Electronic Amusement Game for play, then for each game, the meter shall record the number of credits, or equivalent monetary units, wagered and won for each game,

(C) hand-paid and progressive jackpots paid for that Player Terminal, which must include the cumulative amounts paid by an attendant for any such jackpot not otherwise metered pursuant to subparagraph (b) of these rules.

(D) the number of games played on the Player Terminal, and

(E) the number of times the cabinet door is opened or accessed;

(8) Under no circumstances shall the Player Terminal electronic accounting meters be capable of being automatically reset or cleared, whether due to an error in any aspect of its or a game's operation or otherwise. All meter readings must be recorded and dated both before and after an electronic accounting meter is cleared;

(9) At a minimum, each Player Terminal shall have the following game information available for display on the video screen and/or displayed on the Player Terminal itself, in a location conspicuous to the player:

(A) the rules of the game being played,

(B) the maximum and minimum cost of a wager, purchase or play activation and the amount of credits, or cash equivalents, which may be won for each game offered through that Player Terminal,

(C) the player's credit balance,

(D) the outcome of the game then being played, and

(E) any prize won on the game then being played;

(10) The video screen or other means for displaying game rules, outcomes and other game information shall be kept under a glass or other transparent substance which places a barrier between the player and the actual surface of the display. At no time may stickers or other removable media be placed on the Player Terminal's face for purposes of displaying rules or payouts;

(11) No hardware switches may be installed on a Player Terminal or any associated equipment which may affect the outcome or payout of any game for which the Player Terminal is used. Switches may be installed to control the ergonomics of the Player Terminal; and

(12) Where the system or Components are linked with one another in a local network for progressive jackpot, function sharing, aggregate prizes or other purposes, communication protocols must be used which ensure that erroneous data or signals will not adversely affect the operations of any such system or Components.

325:85-15-3. General Player Terminal requirements

For Player Terminals connected to a game server, the following Standards shall apply:

(1) The game server shall generate and transmit to the bank of Player Terminals a set of random numbers, color and/or symbols, some of which are drawn prior to the sale of bingo cards. The subsequent game results are determined at the Player Terminal and the resulting information is transmitted to the account server.

(2) The game servers shall be housed in a game server room or secure locked cabinet outside of the Player Terminal.

(3)The following are the Bonanza-Style Bingo Game Server requirements for ball drawing:

(A) The balls shall be drawn via an approved electronic RNG certified for use in the game of Bingo or be drawn by an approved Mechanical RNG (such as a ball blower);

(B) The Racetrack Gaming Operator Licensee shall have no discretion over which balls are drawn; and

(C) The Game Server shall have the ability to pre-draw and transmit the drawn balls to the individual Player Terminals prior to the sale of cards for that game, provided that it is understood that not all balls need to be pre-drawn.

325:85-15-4. Terminal security

The Player Terminal must be able to withstand forced entry, unless such entry causes an error condition.

325:85-15-8. Player Terminal identification

(a) A Player Terminal shall have an identification badge, designed to be non-removable, affixed to the exterior of the cabinet by the Manufacturer, and this badge shall include information sufficient to allow the Commission to determine the following:

(1) The Manufacturer;

(2) The Player Terminal's unique serial number;

(3) The Player Terminal model number; and

(4) The date of manufacture.

(b) The Commission may also affix to each Player Terminal on the premises a Commission identification tag.

325:85-15-9. Tower light

The Player Terminal shall have a light located conspicuously on top that automatically illuminates when a player has won an amount or is redeeming credits that the Player Terminal cannot automatically pay, or an error condition has occurred (including 'Door Open'), or a 'Call Attendant' condition has been initiated by the player An audible alarm may be substituted for this requirement.

325:85-15-10. Power surges

The Player Terminal shall not be adversely affected by surges or dips of ± 20% of the supply voltage other than resets that do not result in damage to the equipment or loss or corruption of data.

325:85-15-11. Coin diverter

For games that accept coins or tokens, the Player Terminal must use a coin 'Diverter' that directs coins to the hopper, or to the drop box when the hopper is full. The hopper full detector shall be monitored by the control program to determine whether a change in Diverter status is required. If the state of the detector changes, the Diverter shall operate as soon as possible, or within ten games, after the state change, without causing a disruption of coin flow, or creating a coin jam. Hopperless Player Terminals shall always divert coins to the drop box.

325:85-15-12. Drop box

If the game is equipped to accept coins or tokens, then the following rules must be met:

(1) Each Player Terminal equipped to accept coins or tokens shall contain a separate drop bucket or drop box to collect and retain all such coins or tokens that are diverted into the drop box;

(2) A drop bucket shall be housed in a locked compartment separate from any other compartment of the Player Terminal; and

(3) There must be a method to monitor the drop box area, even if manufactured by a different company.

325:85-15-13. External doors/compartments

The following requirements shall apply to the Player Terminal's external doors:

(1) Doors shall be manufactured of materials that are suitable for allowing only legitimate access to the inside of the cabinet. That is, doors and their associated hinges shall be capable of withstanding determined illegal efforts

to gain access to the inside of the Player Terminal and shall leave evidence of tampering if an illegal entry is made;

(2) All external doors shall be locked and monitored by door access sensors, which shall detect and report all external door openings, both to the Player Terminal by the way of an error and to an on-line system. The drop box door open does not have to cease game play; however, it must still illuminate the tower light or alarm and notify the on-line system;

(3) It shall not be possible to insert a device into the Player Terminal that will disable a door open sensor when the machine's door is closed, without leaving evidence of tampering; and

(4) The sensor system shall register a door as being open when the door is moved from its fully closed and locked position.

325:85-15-14. Logic compartment

The logic compartment is a locked cabinet area(s) with its own locked door - which houses critical electronic components that have the potential to significantly influence the operation of the Player Terminal. There may be more than one such logic compartment in a Player Terminal.

(1) CPUs and other electronic Components involved in the operation and calculation or display of game play (e.g., game controller electronics and Components housing the game or system firmware program storage media) must be housed in a logic component.

(2) Communication controller electronics, and Components housing the communication program storage media or the communication board for the on-line system need not be housed in a logic compartment and may reside outside the Player Terminal.

(3) The logic compartment(s) shall be locked with a separate key kept by a Gaming Agent. A Gaming Agent must be personally present any time a logic compartment is opened, and only the Gaming Agent may insert and use the logic compartment key.

325:85-15-15. Coin and currency compartments

The coin and currency compartments shall be locked separately from the main cabinet area, except that a separate cash compartment shall not be required for coins necessary to pay prizes in a Player Terminal that pays prizes through a drop hopper. Coin and currency compartments must also meet the following requirements:

(1) Access to the currency storage area shall be secured via separate key locks and shall be fitted with sensors that report to an on-line system that the door has opened/closed or the bill stacker has been removed.

(2) Access to the currency storage area shall be through two levels of locks, the relevant outer door plus one other door or lock, before the receptacle or currency can be removed.

325:85-15-16. Function of a Random Access Memory (RAM) Clear

Following the initiation of a RAM reset procedure (using a certified RAM Clear method), the game program shall execute a routine, which initializes each and every bit in RAM to the default state. For games that allow for partial RAM clears, the methodology in doing so must be accurate and the game must validate the un-cleared portions of RAM. The default reel position or game display after a RAM reset shall not be the top award on any selectable line. The default game display, upon entering game play mode, shall also not be the top award. This applies to the base game only and not any secondary bonus devices.

325:85-15-17. Configuration setting

It shall not be possible to change a configuration setting that causes an obstruction to the electronic accounting meters without a RAM Clear. Any such change must be done by a secure means, which includes access to the locked logic compartment.

325:85-15-18. Critical memory defined

Critical memory is used to store all data that is considered vital to the continued operation of the Player Terminal. This includes, but is not limited to:

(1) All electronic meters required in 'Electronic Metering within the Player Terminal,' including last bill data and power up and door open metering;

(2) Current credits;

(3) Player Terminal/game configuration data;

(4) Information pertaining to the last ten plays with the Random Number Generator outcome, including the current game, if incomplete; and

(5) Software state, the last normal state the Player Terminal software was in before interruption.

325:85-15-19. Critical memory integrity

Comprehensive checks of Critical Memory shall be made during each Player Terminal restart such as power-up cycle. The Player Terminal control program shall test for possible corruption of Critical Memory. Test methodology shall detect 99.99 percent of all possible failures. In addition, all Critical Memory (Non-Volatile) shall:

(1) Have the ability to retain data for a minimum of thirty days after power is discontinued from the machine.

(2) Only be cleared by accessing the locked logic compartment in which it's housed;

(3) Result in a RAM Error if the control program detects an unrecoverable memory error; and

(4) The RAM should not be cleared automatically, but shall require a full RAM clear (RAM Reset) performed by an authorized Person.

325:85-15-20. Program Storage Devices

All Program Storage Devices, including EPROMs, DVD, CD-ROM, Compact Flash and any other type of Program Storage Devices, shall be clearly marked with sufficient information to identify the software and revision level of the information stored in the devices and shall only be accessible with access to the locked logic compartment.

325:85-15-21. Write Once (Non-Writable) Program Storage

For Program Storage Devices that are written to once (i.e., EPROM, CD), the following requirements shall be met:

(1) CD-ROM specific based Program Storage Devices shall:

(A) Not be a re-writeable disk; and

(B) The "Session" shall be closed to prevent any further writing.

(2) Non-EPROM specific (including CD-ROM) Program Storage Devices shall meet the following requirements:

(A) The control program shall authenticate all critical files by employing a Hashing Algorithm which produces a 'Message Digest' output of at least 128 bits at minimum, as certified by the Independent Testing Laboratory. The Message Digest(s) shall be stored on a memory device (ROM-based or other medium) within the Player Terminal. Message Digests which reside on any other medium shall be encrypted, using a public/private key Algorithm with a minimum of a 512 bit key.

(B) The Player Terminal shall authenticate all critical files against the stored Message Digest(s), as required in (i), above. In the event of a failed authentication after the game has been powered up, the Player Terminal should immediately enter an error condition with the appropriate tower light signal and record the details including time and date of the error in a log. This error shall require operator intervention to clear. The game shall display specific error information and shall not clear until either the file authenticates properly, following the operator intervention, or the medium is replaced or corrected, and the device's memory is cleared, the game is restarted, and all files authenticate correctly.

325:85-15-22. Writable Program Storage

This section applies to Player Terminals where the control program is capable of being erased and re-programmed without being removed from the Player Terminal, bill acceptor or other equipment or related device, which shall meet the following requirements:

(1) Re-programmable Program Storage Devices shall only write to alterable storage media containing data, files, and programs that are not critical to the basic operation of the game, such as marketing information. Notwithstanding the foregoing, such device may write to media containing critical data, files, and programs provided that:

(A) A log of all information that is added, deleted, and modified be stored on the media;

(B) Verifies the validity of all data, files, and programs which reside on the media using the methods listed in the Non-EPROM Specific requirements;

(C) Contains appropriate security to prevent unauthorized Modifications;

(D) Does not allow game play while the media containing the critical data, files, and programs is in a modifiable state; and

(2) Downloadable software shall not be used until specifically authorized by Commission Rule.

325:85-15-23. Integrity of the Control Program

The control program shall ensure the integrity of all critical program Components during the execution of said Components and the first time the files are loaded for use, even if only partially loaded. RAM and PSD (Program Storage Device) space that is not critical to machine security (e.g., video or sound ROM) is nevertheless required to be validated. If any of the video or sound files contain payout amounts or other information needed by the player, the files or program storage must have a secure method of verification.

325:85-15-24. Multi-station games

A multi-station game is a gaming device that incorporates more than one Player Terminal which may be controlled by a master terminal. The master terminal, containing the game's CPU, will house the game display, which is shared among the Player Terminals. Each station must meet the technical standards outlined throughout these Rules, including Player Terminal identification and metering.

325:85-15-25. Circuit board identification

(a) Each printed circuit board shall be identifiable by some sort of name (or number) and revision level;

(b) The top assembly revision level of the printed circuit board shall be identifiable. If track cuts and/or patch wires are added to the printed circuit board, then a new revision number or level must be assigned to the assembly; and

(c) Manufacturers shall ensure that circuit board assemblies, used in their Player Terminals, conform functionally to the documentation and the certified versions of those printed circuit boards that were evaluated and certified by the Independent Testing Laboratory.

325:85-15-26. Mechanical devices used for displaying game outcomes

Electro-mechanically controlled display devices, such as reels or wheels, shall have a sufficiently closed loop of control so as to enable the software to detect a malfunction, or an attempt to interfere with the correct operation of that device. If a reel or wheel is not in the position it is supposed to be in, an error condition must be generated and reported to the on-line system;.

325:85-15-27. Video monitors/touchscreens

Touch screens requiring calibration must be able to be re-calibrated by venue staff without access to the Player Terminal cabinet other than opening the main door. There shall be no hidden or undocumented buttons/touch points anywhere on a touch screen that affect game play, except as provided for by the game rules.

325:85-15-28. Coin or token acceptors

(a) If the Player Terminal uses a coin acceptor, the acceptor shall be reasonably designed to accept or reject a coin on the basis of metal composition, mass, composite makeup, or equivalent security. In addition, the coin acceptor shall be reasonably designed to prevent the use of cheating methods such as slugging (counterfeit coins), stringing (coin pullback), the insertion of foreign objects and other manipulation.

(b) Acceptance of coins for crediting to the credit meter shall only be possible when the Player Terminal is enabled for play. Other states, such as error conditions, including door opens, audit mode and game play, shall cause the disabling of the coin acceptor system.

325:85-15-29. Bill acceptors

All acceptance devices shall be reasonably designed to detect the entry of valid bills, coupons, ticket vouchers, or other approved notes, if applicable, and provide a method to enable the Player Terminal software to interpret and act appropriately upon a valid or invalid input. In addition, bill acceptor devices(s) shall only register credits when the bill or other note has passed the point where it is accepted and stacked; and theacceptor has sent the "irrevocably stacked" message to the machine.

325:85-15-33. Accountability of bills/tickets or other items accepted

A Player Terminal which contains a bill acceptor device shall maintain sufficient electronic metering to be able to report the following:

(1) Total monetary value of all items accepted;

(2) Total number of all items accepted; and

(3) A breakdown of the items accepted, as follows:

(A) For bills, the game shall report the number of bills accepted for each bill denomination;

(B) For all other notes, the game shall have a separate meter that reports the number of notes accepted, not including bills.

325:85-15-34. Bill acceptor recall

A Player Terminal that uses a bill acceptor shall retain in its memory and display the denomination of the last five items accepted by the bill acceptor, including, for example, U.S. currency, ticket vouchers and coupons.

325:85-15-35. Bill acceptor error conditions

Each Player Terminal and/or bill acceptor shall have the capability of detecting and displaying an error condition, for the conditions below. It is acceptable for the bill acceptor to disable or flash a light or lights to indicate the error has occurred, provided the information is communicated to the Player Terminal and the bill acceptor disables:

(1) Bill Stacker Full;

(2) Bill Jams;

(3) Bill Acceptor Door Open - where a Bill Acceptor door is the belly glass door, a door open signal is sufficient; and

(4) Bill Stacker Door Open or Bill Stacker Removed.

325:85-15-36. Bill acceptor stacker requirements

Each bill acceptor shall have a secure bill stacker and items accepted by the bill acceptor shall be deposited into the secure stacker. The secure bill stacker shall be attached to the Player Terminal in such a manner so that it cannot be easily removed by physical force and shall meet the following requirements:

(1) The bill acceptor device shall have a 'stacker full' sensor;

(2) There shall be a separate key to access the bill stacker area. This key shall be separate from the main door. In addition, a separate key shall be required to remove the bills from the bill stacker; and

(3) A tower light or alarm shall be activated whenever there is access to the bill door or the stacker has been removed.

325:85-15-39. Hoppers & hopper error conditions

(a) For hopper games, there shall not be an abnormal payout when the hopper is exposed to higher levels of electro-static discharge or if power is lost at any time during a payout. The hopper shall be interfaced in such a way as to allow the Player Terminal control program to monitor the hopper mechanism in all game states, to identify the following events and lock up the game in an error condition, requiring attendant intervention, when the following occur:

(1) Extra coin paid;

(2) Hopper jam or empty.

(b) The hopper shall be resistant to manipulation by the insertion of a light source or any foreign object.

325:85-15-40. Payment by ticket printers

(a) If the Player Terminal has a printer that is used to make payments, the printer shall be located in a locked area of the Player Terminal, which requires opening of the main door to access, but the printer shall not be located in the logic compartment or the drop box.

(b) The Player Terminal, in which the printer is housed shall be linked to a ticket validation system, which records the ticket information. Validation approval or information shall come from the ticket validation system in order to validate tickets. Tickets may be validated at any location, as long as it meets the standards within this section.

(c) Each Player Terminal shall be designed so that if communication is lost, and validation information cannot be sent to the ticket validation system, there is an alternate method of payment. The validation system must be able to identify duplicate tickets, to prevent fraud.

(d) The printer shall print on a ticket and must provide the ticket data to a ticket validation system that records the following information regarding each payout ticket printed:

(1) Value of credits in local monetary units in numerical form;

(2) Time of day the ticket was printed in twenty-four hour format showing hours and minutes - printing of this information is not required, provided that storage of this information is retained in the database;

(3) Date, in any recognized format, indicating the day, month, and year;

(4) Player Terminal number or machine number; and

(5) Unique validation number, or barcode.

(e) If the taxation limit is reached on any single play when using a ticket printer, then the ticket must not be able to be redeemed at any place other than through human interaction - not on another machine or at a self-serve kiosk.

(f) The Player Terminal shall either keep a duplicate copy or print only one copy to the player but have the ability to retain the ticket-out information within the cashless transaction log, to resolve player disputes. In addition, an approved ticket validation system shall be used to validate the payout ticket, and the ticket information on the system shall be retained at least as long as the ticket is valid at that location.

(g) A printer shall have mechanisms to allow the Player Terminal to interpret and act upon the following conditions. Such conditions must disable the game, and produce an error condition, requiring attendant intervention to resume play:

(1) Out of paper/paper low (It is not necessary to lock up a game during a 'Paper Low' condition.);

(2) Printer jam/failure; and

(3) Printer disconnected. (It is permissible for the Player Terminal to detect this error condition when the game tries to print.)

325:85-15-42. Credit meter

The credit meter shall be maintained in credits or cash value.

325:85-15-43. Electronic accounting and occurrence meters

The required electronic meters are as follows (accounting meters are designated with an asterisk *).

(1) The Amounts Wagered* (OR cash in) meter shall cumulatively count the total amounts wagered during game play, except credits that are won during the game that are subsequently risked in a double-up mode.

(2) The Amounts Won* (OR credit out) meter shall cumulatively count all amounts won by the player at the end of the game that were not paid by an Attendant, including amounts paid by a ticket printer. This meter must not increment for bills inserted and cashed out (used as a change machine).

(3) The drop* meter shall maintain a cumulative count of the number of coins that have been diverted into a drop bucket and credit value of all bills and tickets/coupons inserted into the Bill Acceptor for play. NOTE: It is acceptable to have separate 'drop' meters for coins, bills, tickets, and coupons.

(4) The handpays* meter shall reflect the cumulative amounts paid by an Attendant for progressive and non-progressive wins.

(5) The games-played meter shall display the cumulative number of games played since the last RAM clear.

(6) A cabinet door meter shall display the number of times the front cabinet door was opened since the last RAM clear.

(7) The drop door meter shall display the number of times the drop door and the Bill Acceptor door was opened since the last RAM clear.

(8) The cancelled credit* meter shall reflect the cumulative amounts paid by an Attendant that are in excess of the credit limit and residual credits that are collected. NOTE: Printer games do not require a cancelled credit meter unless a 'printer limit' option exists on the game.

(9) The progressive occurrence meter shall count the number of times each progressive meter is activated.

325:85-15-44. Multi-game game specific meters

In addition to the electronic accounting meters required above, each individual game available for play shall have at least "Amount Bet" and 'Amount Won" meters in either credits or dollars. Even if a 'doubleup or gamble' game is lost, the initial win amount/credits bet amount shall be recorded in the game specific meters. Alternatively, there can be separate meters that account for the double-up or gamble information. Either way, the method of metering must be understood on the screen.

325:85-15-45. Double-up or gamble meters

For each type of double-up or gamble offered, there shall be two meters to indicate the amount doubled and the amount won, which should increment every time a double -up or gamble occurs. If the Player Terminal does not supply accounting for the double -up or gamble information, the feature must not be enabled for use.

325:85-15-46. Cashless transaction log

All Player Terminals must have the capacity to display a complete transaction history for the most recent transaction with a cashless wagering system (this would include tickets, coupons, electronically transferred promotional and/or bonusing credits, etc.), and the previous ten (10) transactions prior to the most recent transaction that incremented any of the accounting meters.

325:85-15-47. Error conditions

Player Terminals shall be capable of detecting and displaying the following error conditions and illuminate the tower light for each or sound an audible alarm. They shall be cleared either by an attendant or upon initiation of a new play sequence and be communicated to an on-line monitoring and control system, if applicable:

(1) Coin-in jam;
(2) Coin-out jam;
(3) Hopper empty or timed out;
(4) Hopper runaway or extra coin paid out;
(5) RAM error;
(6) Low RAM battery, for batteries external to the RAM itself or low power source;
(7) Currency-in jam;
(8) Program error or authentication mismatch;
(9) Door open (including bill acceptor);
(10) Reverse Coin-in (coin traveling wrong way through acceptor);
(11) Reel spin errors, including a mis-index condition for rotating reels, that affect the outcome of the game:
(A) The specific reel number shall be identified in the error code;
(B) In the final positioning of the reel, if the position error exceeds one-half of the width of the smallest symbol excluding blanks on the reel strip; and
(C) Microprocessor-controlled reels shall be monitored to detect malfunctions such as a reel which is jammed, or is not spinning freely, or any attempt to manipulate their final resting position.
(12) Power reset;
(13) Any credits on the Player Terminal that are attempted to be transferred to the host system that result in a communication failure for which this is the only available payout medium (the patron cannot cashout via hopper or ticket printer) must result in a hand-pay lockup or tilt on the Player Terminal.

325:85-15-48. Game interruption and resumption

After a program interruption (e.g., power down), the software shall be able to recover to the state it was in immediately prior to the interruption occurring and:

(1) If a Player Terminal is powered down while in an error condition, then upon restoring power, the error message shall be displayed and the Player Terminal shall remain locked-up. This is unless power-down is used as part of the error reset procedure, or if on power-up or door closure, the Player Terminal checks for the error condition and detects that the error is no longer in existence.
(2) Upon program resumption, the following procedures shall be performed as a minimum requirement:
(A) Any communications to an external device shall not begin until the program resumption routine, including self-tests, is completed successfully;
(B) Player Terminal control programs shall test themselves for possible corruption due to failure of the program storage media;
(C) The integrity of all critical memory shall be checked; and
(D) Games utilizing microprocessor-controlled mechanical displays (e.g., reels or wheels) shall re-spin automatically to display the last valid game's result when the play mode is re entered, and the reel positions have been altered.

325:85-15-49. Door open events

When the Player Terminal's main door is opened, the game shall cease play, enter an error condition, display an appropriate error message, disable coin acceptance and bill acceptance, and either sound an alarm or illuminate the tower light or both. When the Player Terminal's main door is closed, the game shall return to its original state and display an appropriate error message, until the next game has ended. The software shall be able to detect any meter access to the following doors or secure areas:

(1) All external doors;
(2) Drop box door;
(3) Bill acceptor door.

325:85-15-50. RNG requirements

Where the authorized game or system uses a RNG to make selections, such RNG and the selections shall:

(1) Be statistically independent.
(2) Conform to the desired random distribution.
(3) Pass various recognized statistical tests.
(4) Be unpredictable.
(5) Be cycled continuously in the background between games and during game play at a speed that cannot be timed by the player.
(6) Randomly determine the first seed by an uncontrolled event. After every game, there shall be a random change in the RNG process (new seed, random timer, delay, etc.). This will verify the RNG does not start at the same value, every time. It is permissible not to use a random seed; however, the Manufacturer must ensure that the games will not synchronize.
(7) If a random number with a range shorter than that provided by the RNG is required for some purpose within the Player Terminal, the method of re-scaling, (i.e., converting the number to the lower range) is to be designed in such a way that all numbers within the lower range are equally probable.
(8) If a particular random number selected is outside the range of equal distribution of rescaling values, it is permissible to discard that random number and select the next in sequence for the purpose of re-scaling.
(9) Unless otherwise denoted on the payglass, where the Player Terminal plays a game that is recognizable such as electronic card games, the same probabilities associated with the live game shall be evident in the simulated game. For example, the odds of drawing a specific card or cards in an electronic card game shall be the same in the live game as if a physical deck of cards were being used. Card games also must meet the following:

(A) Cards once removed from the deck shall not be returned to the deck except as provided by the rules of the game depicted; and

(B) As cards are removed from the deck, they shall be immediately used as directed by the rules of the game (i.e., the cards are not to be discarded due to adaptive behavior by the Player Terminal).

(10) Mechanical-based RNG games are games that use the laws of physics to generate the outcome of the game. All mechanical-based RNG games must meet the requirements of these Rules with the exception of the requirement stated above that dictate the requirements for electronic RNGs.

(11) Each possible permutation or combination of game elements that produces winning or losing game outcomes shall be available for random selection at the initiation of each play, unless otherwise denoted by the game.

(12) A Player Terminal shall use appropriate communication protocols to protect the RNG and random selection process from influence by associated equipment, which may be communicating with the Player Terminal.

325:85-15-51. Required notice of average theoretical percentage payout

Although the specifications for Authorized Games do not specify a minimum percentage payout requirement, the Independent Testing Laboratory, when testing the prototype for each game, shall determine the theoretical payout minimum during the expected life for each game. The Independent Testing Laboratory report shall inform the Commission and Racetrack Gaming Operator Licensee of the theoretical minimum payout of each game tested. Using the theoretical minimum payout provided for each game, the Racetrack Gaming Operator Licensee shall determine the average theoretical payout for each game installed at its Gaming Facility. The Racetrack Gaming Operator Licensee shall submit all such payout information, including the material assumptions used in the preparation of the payouts, to the Commission where such information shall be made available to the public at the Commission office.

325:85-15-52. Bonus games

If the game contains a 'bonus feature' including a game within a game, the following requirements shall be met:

(1) The game shall display clearly to the player which game rules apply to the current game state;

(2) Each game which offers free games during game play (i.e., "fever" mode - a mode which gives the player an opportunity for the following 'X' number of hands to achieve a certain winning combination with the pay-off being some number of bonus credits) should include the number of hands remaining for the free game event(s) as each free game is played;

(3) The game, other than those that occur randomly, shall display to the player sufficient information to indicate the current status towards the triggering of the next bonus game (i.e., if the game requires obtaining several events/symbols towards a feature, the number of events/symbols needed to trigger the bonus shall be indicated along with the number of events/symbols collected at any point);

(4) The game shall not adjust the likelihood of a bonus occurring, based on the history of prizes obtained in previous games (i.e., games shall not adapt their theoretical return to player based on past payouts);

(5) If a bonus or feature game requires extra credits to be wagered and the game accumulates all winnings (from the trigger and the feature) to a temporary "win" meter (rather than directly to the credit meter), the game shall:

(A) Provide a means where winnings on the temporary meter can be bet (via the credit meter) to allow for instances where the player has an insufficient credit meter balance to complete the feature;

(B) Transfer all credits on the temporary meter to the credit meter upon completion of the feature;

(C) Not exceed the max bet limit, if one is set; and

(D) Provide the player an opportunity NOT to participate.

(6) If a game's bonus is triggered after accruing a certain number of events/symbols or combination of events/symbols of a different kind, the probability of obtaining like events/symbols shall not deteriorate as the game progresses (e.g., for identical events/symbols it is not permitted that the last few events/symbols needed are more difficult to obtain than the previous events/symbols of that kind);

(7) The game shall make it reasonably clear to the player that they are in this mode to avoid the possibility of the player walking away from the Player Terminal not knowing the game is in a bonus mode.

325:85-15-53. Multi-line games

Each individual line to be played shall be clearly indicated by the Player Terminal so that the player can reasonably determine which lines are being bet on. In addition, the winning playline(s) shall be reasonably discernable to the player.

325:85-15-54. Multiple games offered for play at one Player Terminal

The following requirements apply to Player Terminals that offer more than one (1) game to be played:

(1) The methodology employed by a player to select and discard a particular game for play on a multi-game Player Terminal shall be clearly explained to the player on the Player Terminal, and be easily followed.

(2) The Player Terminal shall be able to clearly inform the player of all games, their rules and/or the paytables before the player must commit to playing them.

(3) The player shall at all times be made aware of which game has been selected for play and is being played, as applicable.

(4) The player shall not be forced to play a game just by selecting that game. The player shall be able to return to the main menu.

(5) It should not be possible to start a new game before the current play is completed and all relevant meters have been updated (including features, gamble and other options of the game) unless the action to start a new game terminates the current play in an orderly manner.
(6) The set of games offered to the player for selection, or the paytable, can be changed only by a secure certified method which includes turning on and off games available for play through a video screen interface. The requirements outlined in 'Configuration Setting' of these Rules shall govern the RAM Clear control requirements for these types of selections. However, for games that keep the previous paytable's (the paytable just turned off) data in memory, a RAM clear is not required.
(7) No changes to the set of games offered to the player for selection (or to the paytable) are permitted while there are credits on the player's credit meter or while a game is in progress.

325:85-15-55. Taxation reporting limits

The game shall be capable of entering a lock-up condition if the sum of awards from a single game is equal to the 'Taxation Limit' and which requires an Attendant to clear (currently $1,200 per IRS limits).

325:85-15-56. Test/diagnostic mode (demo mode)

If in a test mode the game shall clearly indicate that it is in a test mode, not normal play, and:
(1) Any test that incorporates credits entering or leaving the Player Terminal (e.g., a hopper test) shall be completed on resumption of normal operation;
(2) There shall not be any test mode that increments any of the electronic meters (test meters are permissible provided the meter indicates as such);
(3) Any credits on the Player Terminal that were accrued during the test mode shall be cleared before the test mode is exited;
(4) The main cabinet door of the Player Terminal may automatically place the Player Terminal in a service or test-mode or may also be entered, via an appropriate instruction, from an attendant during an audit mode access; and
(5) When exiting from test mode, the game shall return to the original state it was in when the test mode was entered.

325:85-15-57. Number of last plays required

Information on at least the last ten games is to always be retrievable on the operation of a suitable external key-switch, or another secure method that is not available to the player. Last play information shall provide all information required to fully reconstruct the last ten plays. All values shall be displayed, including the initial credits, credits bet, credits won, and credits paid. If a progressive was awarded, it is sufficient to indicate the progressive was awarded and not display the value. This information should include the final game outcome, including all player choices and bonus features. The results of double-up or gamble, if applicable, should also be included. The last game recall shall reflect bonus rounds in their entirety. If a bonus round lasts 'x number of events,' each with separate outcomes, each of the 'x events' shall be displayed with its corresponding outcome if the outcome results in an award. The recall shall also reflect position-dependent events if the outcome results in an award. For games that may have infinite free games, there shall be a minimum of fifty games recallable.

325:85-15-58. Software verification

The device shall have the ability to allow for an independent integrity check of the device's software from an outside source. This must be accomplished by being authenticated by a third- party device, which may be embedded within the game software or having an interface port for a third-party device to authenticate the media. This integrity check will provide a means for field testing the software to identify and validate the program. The Independent Testing Laboratory, prior to device approval, shall approve the integrity check method. If the authentication program is contained within the game software, the Manufacturer must receive written approval from the Independent Testing Laboratory prior to submission.

325:85-15-59. Progressive prize management

Systems shall be permissible that allow progressive prize management.

325:85-15-60. Progressive meter/display

(a) A progressive meter/display can be one or more on-site progressive Player Terminal(s) that are linked, directly or indirectly, to a display, which may be a mechanical, electrical, or electronic device, including the video display that shows the payoff which increases in increments at a set rate of progression as credits are wagered.
(b) For games that have progressives such as 'Mystery Jackpot', the payoff does not have to be displayed to the player, although there should be an indication as to this type of feature on the game. All progressive meter displays shall be reasonably accurate and shall be reasonably visible to players.

325:85-15-61. Progressive Controllers

A Progressive Controller is all of the hardware and software that controls all communications among the devices that calculates the values of the progressives and displays the information within a progressive Player Terminal link (if applicable, progressive Player Terminal(s) may be internally controlled) and the associated progressive meter. This equipment includes but is not limited to PC-based computers, wiring, and collection nodes, etc. The method by which system jackpot parameter values are modified or entered shall be secure. Progressive Controllers shall:
(1) During the 'Normal Mode' of progressive Player Terminals, the Progressive Controller shall continuously monitor each device on the link for credits bet and shall multiply the same by the rate of progression and denomination in order to determine the correct amounts to apply

to the progressive jackpot. This shall be at leaset 99.99% accurate.

(2) The Progressive Controller or other approved progressive system Component shall keep the following information in non-volatile memory, which shall be displayed on demand:

(A) The number of progressive jackpots won on each progressive level if the progressive display has more than one winning amount;

(B) The cumulative amounts paid on each progressive level if the progressive display has more than one winning amount;

(C) The maximum amount of the progressive payout for each level displayed;

(D) The minimum amount of the progressive payout for each level displayed;

(E) The rate of progression for each level displayed.

(3) If the following events occur, the game that is using the progressive is to be disabled, and an error shall be displayed on the progressive meter, other approved progressive system Component or Player Terminal:

(A) During a communication failure;

(B) When there have been multiple communication errors;

(C) When a controller checksum or signature has failure;

(D) When a controller's RAM or PSD (Program Storage Device) mismatch or failure occurs;

(E) When the jackpot configuration is lost or is not set;

(4) The Progressive Controller shall have a secure means of transferring a progressive jackpot and/or prizes to another on-site Progressive Controller or other approved on-site progressive system Component. Transferring of progressive jackpots must meet the Commission's internal control procedures.

(5) There shall be a secure, two-way communication protocol between the main game processor board and progressive. In addition, the progressive system shall be able to:

(A) Send to the electronic Player Terminal the amount that was won for metering purposes; and

(B) Constantly update the progressive display as play on the link is continued.

(6) Each Progressive Controller used with a progressive Player Terminals shall be housed on-site in a secure environment allowing only authorized accessibility. Access to the controller must conform to the Commission's internal control procedures.

325:85-15-62. Linked Player Terminal odds

Each device on the link shall have the same probability of winning the progressive, adjusted for the denomination played. For instance, the probability shall remain the same for multiple denomination games, based on the monetary value of the wager.

325:85-15-63. Game cycle

A game is considered completed when the final transfer to the player's credit meter takes place (in case of a win), or when all credits wagered or won that have not been transferred to the credit meter are lost.

325:85-15-64. Periodic payments and merchandise prizes

Limitations on the prize amount (annuities, periodic payments, etc.) shall be clearly explained to the player. When merchandise is awarded as a prize, the value attributed to the merchandise by the Racetrack Gaming Operator Licensee shall be the true fair market value of the merchandise.

SUBCHAPTER 20. USE AND OPERATION REQUIREMENTS APPLICABLE TO COMPACT ELECTRONIC GAMES AND NON-COMPACT ELECTRONIC GAMES

325:85-20-1. Applicability

The Use and Operation Requirements set forth in this Subchapter 19 shall apply only to Compact Electronic Games and Non-Compact Electronic Games. The Use and Operation Requirements set forth in this Subchapter 19 shall not apply to Electronic Amusement Games, Electronic Bonanza-Style Bingo Games and Electronic Instant Bingo Games.

325:85-20-2. Terminal security

The Player Terminal must be able to withstand forced entry, unless such entry causes an error condition.

325:85-20-3. Player Terminal identification

(a) A Player Terminal shall have an identification badge, designed to be non-removable, affixed to the exterior of the cabinet by the Manufacturer, and this badge shall include information sufficient to allow the Commission to determine the following:

(1) The Manufacturer;

(2) The Player Terminal's unique serial number;

(3) The Player Terminal model number; and

(4) The date of manufacture.

(b) The Commission may also affix to each Player Terminal on the premises a Commission identification tag.

325:85-20-4. Power surges

The Player Terminal shall not be adversely affected by surges or dips of ± 20% of the supply voltage, other than resets that do not result in damage to the equipment or loss or corruption of data.

325:85-20-5. External doors/compartments

The following requirements shall apply to the Player Terminal's external doors:

(1) Doors shall be manufactured of materials that are suitable for allowing only legitimate access to the inside of the cabinet. That is, doors and their associated hinges shall be capable of withstanding determined illegal efforts to gain access to the inside of the Player Terminal and shall leave evidence of tampering if an illegal entry is made;
(2) All external doors shall be locked and monitored by door access sensors, which shall detect and report all external door openings, both to the Player Terminal by the way of an error and to an on-line system. The drop box door open does not have to cease game play; however, it must still illuminate the tower light or alarm and notify the on-line system;
(3) It shall not be possible to insert a device into the Player Terminal that will disable a door open sensor when the machine's door is closed, without leaving evidence of tampering,; and
(4) The sensor system shall register a door as being open when the door is moved from its fully closed and locked position.

325:85-20-6. Logic compartment

(a) The logic compartment is a locked cabinet area(s) with its own locked door - which houses critical electronic components that have the potential to significantly influence the operation of the Player Terminal. There may be more than one such logic compartment in a Player Terminal. CPUs and other electronic Components involved in the operation and calculation or display of game play (e.g., game controller electronics and Components housing the game or system firmware program storage media) must be housed in a logic component.
(b) Communication controller electronics, and Components housing the communication program storage media or the communication board for the on-line system, need not be housed in a logic compartment and may reside outside the Player Terminal.
(c) The logic compartment(s) shall be locked with a separate key kept by a Gaming Agent. A Gaming Agent must be personally present any time a logic compartment is opened, and only the Gaming Agent may insert and use the logic compartment key.

325:85-20-7. Coin or token acceptors

If the Player Terminal uses a coin acceptor, the acceptor shall be reasonably designed to accept or reject a coin on the basis of metal composition, mass, composite makeup, or equivalent security. In addition, the coin acceptor shall be reasonably designed to prevent the use of cheating methods such as slugging (counterfeit coins), stringing (coin pullback), the insertion of foreign objects and other manipulation. Acceptance of coins for crediting to the credit meter shall only be possible when the Player Terminal is enabled for play. Other states, such as error conditions, including door opens, audit mode and game play, shall cause the disabling of the coin acceptor system.

325:85-20-8. Bill acceptors

All acceptance devices shall be reasonably designed to detect the entry of valid bills, coupons, ticket vouchers, or other approved notes, if applicable, and provide a method to enable the Player Terminal software to interpret and act appropriately upon a valid or invalid input. In addition, bill acceptor devices(s) shall only register credits when: the bill or other note has passed the point where it is accepted and stacked; and the acceptor has sent the "irrevocably stacked" message to the machine.

325:85-20-9. Credit meter

The credit meter shall be maintained in credits or cash value in a manner that is accurate and not misleading to the player.

325:85-20-10. Door open events

When the Player Terminal's main door is opened, the game shall cease play, enter an error condition, display an appropriate error message, disable coin acceptance and bill acceptance, and either sound an alarm or illuminate the tower light or both. When the Player Terminal's main door is closed, the game shall return to its original state and display an appropriate error message, until the next game has ended. The software shall be able to detect any meter access to the following doors or secure areas:
(1) All external doors;
(2) Drop box door;
(3) Bill acceptor door.

325:85-20-11. Taxation reporting limits

The game shall be capable of entering a lock-up condition if the sum of awards from a single game is equal to the 'Taxation Limit' and which requires an Attendant to clear (currently $1,200 per IRS limits).

325:85-20-12. Progressive prize management

Systems shall be permissible that allow progressive prize management.

325:85-20-13. Periodic payments and merchandise prizes

Limitations on the prize amount (annuities, periodic payments, etc.) shall be clearly explained to the player. When merchandise is awarded as a prize, the value attributed to the merchandise by the Racetrack Gaming Operator Licensee shall be the true fair market value of the merchandise.

SUBCHAPTER 21. ACCOUNTING SYSTEM REQUIREMENTS

325:85-21-2. Electronic Accounting Systems

One or more on-site electronic accounting systems shall be required to perform reporting and other functions in support of the activities described in the Act. These systems may communicate with the other computers, Player Terminals and other game Components described in the Act using Standards set forth in the Act. The electronic accounting system shall not interfere with the outcome of any game functions.

325:85-21-6. Jackpot/fill functionality

(a) An electronic accounting system (EAS) must have an application or facility that accurately captures and processes every handpay message from each Player Terminal.

(b) For every single win event that is equal to or greater than the tax reporting threshold (established by the US Internal Revenue Service; currently $1,200), the EAS user must be advised of the need for a W2G or 10425 (required by the US Internal Revenue Service only) which is to be processed, either via the EAS or manually. This option must not be capable of being overridden.

325:85-21-8. EAS stored accounting meters

The EAS must collect and store the following meter information from each Player Terminal:

(1) Total In (credits-in);
(2) Total Out (credits-out);
(3) Total Dropped (coins-dropped or total value of all coins, bills and tickets dropped);
(4) Hand Paid (handpays);
(5) Cancelled Credits (if supported on Player Terminal);
(6) Bills In (total monetary value of all bills accepted);
(7) Individual Bill Meters (total number of each bill accepted per denomination);
(8) Games-Played;
(9) Cabinet Door (instance meter which may be based on EAS count of this event);
(10) Drop Door(s) (instance meter which may be based on EAS count of this event);
(11) Tickets In (total monetary value of all tickets accepted); and
(12) Tickets Out (total monetary value of all tickets produced).

325:85-21-9. EAS required reports

The EAS must generate, at a minimum, the following reports on a life-to-date basis and such other frequency as is required by the Executive Director:

(1) Net Win/Revenue Report for each Player Terminal;
(2) Drop Comparison Reports for each medium dropped (examples = coins, bills) with dollar and percent variances for each medium and aggregate for each type;
(3) Metered vs. Actual Jackpot Comparison Report with the dollar and percent variances for each and aggregate;
(4) Theoretical Hold vs. Actual Hold comparison with variances;
(5) Significant Event Log for each Player Terminal; and
(6) Other Reports, as required by the Commission Executive Director and the Office of the Oklahoma State Auditor and Inspector.

325:85-21-10. Security access control

The EAS shall not permit the alteration of any significant log information communicated from the Player Terminal. Additionally, there should be a provision for system administrator notification and user lockout or audit trail entry, after a set number of unsuccessful login attempts.

325:85-21-11. Data alteration

The EAS shall not permit the alteration of any accounting or significant event log information that was properly communicated from the Player Terminal without supervised access controls. In the event financial data are changed, an audit log must be capable of being produced to document:

(1) Data element altered;
(2) Data element value prior to alteration;
(3) Data element value after alteration;
(4) Time and date of alteration; and
(5) Personnel that performed alteration (user login).

325:85-21-12. System back-up

The EAS shall have sufficient redundancy and modularity so that if any single Component or part of a Component fails, gaming can continue. There shall be redundant copies of each log file or system database or both, with open support for backups and restoration.

325:85-21-13. Recovery requirements

In the event of a catastrophic failure when the EAS cannot be restarted in any other way, it shall be possible to reload the system from the last viable backup point and fully recover the contents of that backup, which must consist of at least the following information:

(1) Significant events;
(2) Accounting information;
(3) Auditing information; and
(4) Specific site information such as device file, employee file, progressive set-up, etc.

325:85-21-17. Ticket validation system - additional requirements

A ticket validation system may be entirely integrated into a EAS or exist as an entirely separate entity. Payment by ticket printer as a method of credit redemption on a Player Terminal is only permissible when the Player Terminal is linked to an approved ticket validation system. Validation information shall be communicated from the system to the Player Terminal using a secure communication protocol.

325:85-21-18. Ticket information

A ticket shall contain the following printed information at a minimum:

(1) Casino Name/Site Identifier;

(2) Machine Number (or Cashier/Change Booth location number or equivalent context, if ticket creation, outside the Player Terminal, is supported);

(3) Date and time;

(4) Alpha and numeric dollar amount of the ticket;

(5) Ticket sequence number;

(6) Validation number;

(7) Bar code or any machine readable code representing the validation number;

(8) Type of transaction or other method or differentiating ticket types (assuming multiple ticket types are available); and

(9) Indication of an expiration period from date of issue, or date and time the ticket will expire.

325:85-21-19. Ticket types

If Player Terminal ticket generation is to be supported while not connected to the validation system, a ticket system must generate two different types of tickets at minimum. On-line and off- line types are denoted respectively by ticket generation either when the validation system and Player Terminal are properly communicating or the validation system and Player Terminal are not communicating properly. When a patron cashes out of a Player Terminal that has lost communication with the validation system, the Player Terminal must lock up and, after reset, may print an off-line ticket or handpay receipt. The ticket or handpay receipt must be visually distinct from an on-line ticket either in format or content while still maintaining all information required.

325:85-21-21. Ticket redemption

Tickets may be inserted in any Player Terminal participating in the validation system providing that no credits are issued to the Player Terminal prior to confirmation of ticket validity. The customer may also redeem a ticket at a validation terminal (i.e., cashier/change booth, redemption terminal or other approved methods). All validation terminals shall be user and password-controlled.

325:85-21-22. Invalid ticket notification

The ticket validation system must have the ability to identify invalid tickets and notify the Player Terminal to 'Reject' the ticket or advise the cashier that one of the following conditions exists:

(1) Ticket cannot be found on file (stale date, forgery, etc.);

(2) Ticket has already been paid; or

(3) Amount of ticket differs from amount on file (requirement can be met by display of ticket amount for confirmation by cashier during the redemption process).

325:85-21-23. Offline ticket redemption

If the on-line data system temporarily goes down and validation information cannot be sent to the validation system, an alternate method of payment must be provided either by the validation system possessing unique features (e.g., validity checking of ticket information in conjunction with a local database storage) to identify duplicate tickets and prevent fraud by reprinting and redeeming a ticket that was previously issued by the Player Terminal; or by use of an approved alternative method as designated by the regulatory jurisdiction that will accomplish the same.

325:85-21-24. Required reports

The following reports shall be generated at a minimum and reconciled with all validated/redeemed tickets:

(1) Ticket Issuance Report;

(2) Ticket Redemption Report;

(3) Ticket Liability Report;

(4) Ticket Drop Variance Report;

(5) Transaction Detail Report must be available from the validation system that shows all tickets generated by a Player Terminal and all tickets redeemed by the validation terminal or other Player Terminal; and

(6) Cashier Report, which is to detail individual tickets, the sum of the tickets paid by cashier/change booth or redemption terminal.

325:85-21-25. Security of ticket information

Once the validation information is stored in the database, the data may not be altered in any way. The validation system database must be encrypted or password-protected and should possess a non-alterable user audit trail to prevent unauthorized access. Further, the normal operation of any device that holds ticket information shall not have any options or methods that may compromise ticket information. Any device that holds ticket information in its memory shall not allow removing of the information unless it has first transferred that information to the database or other secured Component(s) of the validation system.

325:85-21-26. General standards for redemption kiosks

Redemption kiosks shall meet the Player Terminal standards and use requirements in these Rules, including the memory and communication requirements. In addition, kiosks are required to have an interface to the ticket validation system.

325:85-21-27. Redemption kiosk error conditions

(a) The redemption kiosk must be capable of detecting and displaying the following error conditions. The error condition must illuminate the tower light or sound an audible alarm. This requirement may be substituted for a notification system that alerts casino staff of error conditions. The redemption kiosk shall be able to recover to the state it was in immediately prior to the interruption occurring, including during payment. Error conditions not requiring attendant intervention are A, B, H, I,

J, and K. Error conditions requiring attendant intervention are C, D, E, F, G, and L.

(1) Power loss or power reset;

(2) System and kiosk not communicating, which non-communication may be detected upon ticket insertion only;

(3) Coin or currency out error;

(4) Coin hopper or cash dispenser empty or timed out. This condition does not require immediate intervention if alternate method of payment is available.

(5) RAM error (critical memory);

(6) Low RAM battery (if battery external to the RAM itself used);

(7) Ticket voucher-in jam;

(8) Door open (all external doors);

(9) Bill acceptor stacker full;

(10) Bill acceptor door open;

(11) Bill stacker door open or bill stacker removed; and

(12) Printer errors (If internal printer is supported).

(b) If the redemption kiosk uses error codes instead of a text explanation of the error conditions, a description of error codes and their meanings must be affixed on the inside of the redemption kiosk. If any of the above error conditions occur during the acceptance and/or escrowing of a ticket voucher, the ticket voucher must be returned to the patron without a status change on the ticket validation system or, once the error condition is cleared, proceed to pay the patron and have a status of 'Redeemed' on the system.

325:85-21-28. Maximum redeemable value

The maximum ticket value that can be paid by a kiosk is: $1,199.99.

325:85-21-29. Metering

The redemption kiosk must maintain the following meters, which can be by denomination:

(1) A "Total In" meter that accumulates the total value of all bills and ticket vouchers accepted by the device. Separate 'In meters' shall report the value of all tickets redeemed and the value of all bills redeemed; and

(2) A "Total Out" meter(s) for payments issued by the machine. Separate 'Out meters' shall report the value of all coins dispensed and the value of all bills dispensed.

325:85-21-30. Clearing meters

The redemption kiosk must not have a mechanism whereby an unauthorized user can cause the loss of stored accounting meter information.

325:85-21-31. Required logs

Logs must be maintained in critical memory. For a redemption kiosk that uses a paper log, the log must be housed within the redemption kiosk and must contain the following:

(1) A "Voucher In event log," which must properly log the following information about the voucher redeemed:

(A) Date/time of redemption;

(B) Amount of voucher; and

(C) At least last 4-digits of validation number.

(2) The redemption kiosk must maintain at least 35 events in the "Voucher In" event log.

(3) If the device utilizes a printer to record the information required within this section, the printer must be capable of monitoring any printer fault.

325:85-21-32. Ticket acceptance

Tickets may only be accepted when the redemption kiosk is communicating with the system. Tickets inserted into a redemption kiosk must be rejected when the system link is down and payment shall only be made when the ticket is 'Stacked' within the bill stacker.

SUBCHAPTER 25. TRANSPORTATION, RECEIPT, INSTALLATION AND DISPOSAL OF GAMING MACHINES

325:85-25-1. Restriction on sales, display, distribution, transportation and operation of Gaming Machines

(a) Except as otherwise provided in these rules, no Person may sell, display, supply, ship, transport, or distribute any Gaming Machine or Component thereof for use or play by a Racetrack Gaming Operator Licensee in Oklahoma. Further, no Gaming Machine of a Racetrack Gaming Operator Licensee may be sold, shipped, transported or distributed out-of-State other than by the Racetrack Gaming Operator Licensee itself, unless the Person shipping, transporting or distributing the Gaming Machine is licensed by the Commission as a Distributor, Manufacturer, or Distributor/Manufacturer.

(b) No Racetrack Gaming Operator Licensee may sell or transfer a Gaming Machine to any Person that could not lawfully own or operate the Gaming Machine.

(c) No purchaser or transferee may operate a Gaming Machine at a Gaming Facility without first obtaining a Racetrack Gaming Operator License in the manner set forth in this Title.

325:85-25-2. Transportation Of Gaming Machines into the state

(a) A Gaming Machine is shipped or transported into the State when the starting point for shipping or transporting begins outside the State and the shipping or transporting terminates in the State.

(b) A licensed Manufacturer shipping or transporting a Gaming Machine into the State for use at a Gaming Facility must provide the following information to the Commission, prior to shipment, on forms provided or approved by the Commission:

(1) the full name, address, and license number of the Person making the shipment;

(2) the method of shipment and the name of the carrier, if any;

(3) the full name, address, and license number of the Person to whom the Gaming Machines are being sent and

the destination of the shipment, if different from the address;
(4) the number of Gaming Machines in the shipment;
(5) the serial number of each Gaming Machine;
(6) the model number and description of each Gaming Machine;
(7) the expected arrival date of the Gaming Machines at their destination within the State; and
(8) such other information as required by the Commission.

325:85-25-3. Receipt of Gaming Machines in the state

(a) Any Person in the State that receives a Gaming Machine to be used in a Gaming Facility must, upon receipt of the Gaming Machine, provide the Commission with the following information on forms provided or approved by the Commission:
(1) the full name, address, and license number of the Person receiving the Gaming Machine;
(2) the full name, address, and license number of the Person from whom the Gaming Machine was received;
(3) the date of receipt of the Gaming Machine;
(4) the serial number of each Gaming Machine;
(5) the model number and description of each Gaming Machine;
(6) the Manufacturer of the Gaming Machine;
(7) the location where the Gaming Machine will be placed and the license number of the licensed premises;
(8) the expected date and time of installation of the Gaming Machine at the new location; and
(9) such other information as required by the Commission.

(b) If such Gaming Machine will not be placed in operation within five days of its receipt, the Person who received the Gaming Machine must notify the Commission of the address where the Gaming Machine is warehoused. The warehouse location must be approved in advance by the Commission. At the time such Gaming Machine is removed from inventory and transported to another location within the State, the Racetrack Gaming Operator Licensee must comply with the requirements of these rules.

325:85-25-4. Transportation of Gaming Machines between Commission licensed Gaming Facilities in the state

(a) Manufacturer Licensees, Distributor Licensees, and, subject to the limitations set forth in these rules, Racetrack Gaming Operators Licensees are authorized to transport Gaming Machines within the State.

(b) Except as otherwise provided in these rules, any authorized Person transporting a Gaming Machine from one location to another in the State for use by a Gaming Facility licensed by the Commission must notify the Commission before transporting the Gaming Machine and provide the following information on forms provided or approved by the Commission:
(1) the full name, address, and license number of the Person transporting the Gaming Machine from its current location;
(2) the reason for transporting the Gaming Machine;
(3) the full name, address, and license number of the Person to whom the Gaming Machine is being sent and the destination of the Gaming Machine if different from that address;
(4) the name and address of the carrier and the method of transport;
(5) the model and serial number of the Gaming Machine;
(6) the Gaming Machine License number, if any;
(7) the Manufacturer of the Gaming Machine;
(8) the expected date and time of delivery and/or installation of the Gaming Machine at the new location;
(9) such other information as the Commission may require.

(c) This section does not apply to the movement of Gaming Machines within the same Gaming Facility. Such relocation is subject to Commission approval pursuant to these Rules.

(d) A Racetrack Gaming Operator Licensee may sell or transfer a Gaming Machine only to another Racetrack Gaming Operator Licensee or to a licensed Distributor, Manufacturer, or licensed Distributor/Manufacturer, or a federally recognized Indian tribe that is operating under a Compact. The Racetrack Gaming Operator Licensee must notify the Commission in advance by providing the information required by this section.

325:85-25-5. Approval to distribute Gaming Machines outside of the state

(a) Manufacturers and Distributors located in the State may not sell, ship, transport, or distribute out of the State a Gaming Machine that has been used or located in a Gaming Facility without the prior approval of the Commission. Applications for approval to sell, ship, transport, or distribute gaming machines out of the State must be made, processed, and determined in such manner and using such forms as the Commission may provide or approve. Each application must include:
(1) the full name, state of residence, and address of the purchaser;
(2) the full name, state of residence, and address of the Person to whom shipment is being made, if different than the purchaser;
(3) the destination;
(4) the number of Gaming Machines to be shipped;
(5) the serial number of each Gaming Machine;
(6) the model number of each Gaming Machine and year manufactured;
(7) the denomination of each Gaming Machine, if applicable;
(8) the expected date and time of shipment;
(9) the method of shipment and name and address of the carrier; and
(10) a statement by the purchaser under penalty of perjury that the GamingMachines will be used only for lawful purposes.

(b) Manufacturers and Distributors may not ship Gaming Machines to any destination where possession of Gaming Machines is illegal.

(c) If the Commission does not deny the application for approval to distribute Gaming Machines outside of the State within 10 business days of receipt of a complete application, the application will be deemed approved.

325:85-25-6. On-site testing, installation and placement of Gaming Machines - including each Player Terminal and each game

(a) All Gaming Machines - including each Player Terminal and each game - at a Gaming Facility must be physically located as follows:

(1) in an area that is at all times monitored by the Racetrack Gaming Operator Licensee or a Gaming Employee to prevent access or play of the Gaming Machines by Persons under the age of 18;

(2) in an area that ensures that public access to the Gaming Machines is restricted to Persons legally entitled to play the Gaming Machines at the licensed premises; and

(3) in the sight and Control of the Racetrack Gaming Operator, Licensee or a Gaming Employee.

(b) The initial installation and placement of each Player Terminal and each game within a Gaming Facility must take place in the presence of a Gaming Agent who will at the time of installation test each Player Terminal and each game to ensure that each Player Terminal and each game is identical to a prototype that has been certified by an Independent Testing Laboratory. If the on-site test indicates that a Player Terminal or game does not conform to the certified prototype, the Racetrack Gaming Operator Licensee shall remove the game or Player Terminal from the floor and it may not be placed into operation until such time, if any, as a Gaming Agent finds that it is identical to a prototype certification issued by an Independent Testing Laboratory.

(c) If the on-site test by the Gaming Agent demonstrates that the game or Player Terminal is identical to a prototype certification issued by an Independent Testing Laboratory, the Gaming Agent shall seal the Program Storage Device with a Commission numbered seal.

(d) The Gaming Agent shall also perform a test to ensure that the game and Player Terminal are operating properly, then will conduct a test to determine that they are properly communicating with the Racetrack Gaming Operator Licensee's accounting system(s). Only machines and games that are found to be identical to prototypes certified by an Independent Testing Laboratory and that pass both the operation and communication tests conducted by the Gaming Agent may be installed and placed into operation.

(e) Once the Program Storage Device has been sealed by a Gaming Agent, the seal may only be broken or removed in the presence of a Gaming Agent. The seal may be broken or removed for the purposes of repair or Commission-authorized change to the Program Storage Device in the presence of a Gaming Agent, who, after the change or repair, will verify the new software, if applicable, retest the machine and game and reseal it if the tests show the machine and game are in compliance. If, after retesting, they are found not to be in compliance, the machine or game cannot be placed into operation until such time that the Gaming Agent determines that the machine or game complies with the applicable requirements.

(f) Any relocation of a Player Terminal or game within the licensed premises requires prior written approval by the Gaming Agent.

(g) Licensed Manufacturers and Distributors may store and display, and Persons certified pursuant to this Title may repair, gaming machines or devices only at locations approved in advance by the Commission.

325:85-25-7. Disposal of Gaming Machines

(a) A Gaming Machine used or located at a Gaming Facility may be disposed of only with the Commission's approval and only if the manner of disposition makes the Gaming Machine incapable of use or operation. Any Person seeking to dispose of such Gaming Machine must notify the Commission in writing prior to disposal and provide the following information:

(1) the full name, address, and license number of the Person seeking to dispose of the Gaming Machine;

(2) the serial number of the Gaming Machine;

(3) the model number and description of the Gaming Machine;

(4) the Manufacturer of the Gaming Machine;

(5) the Gaming Machine License number;

(6) the Gaming Machine's hard meter readings;

(7) the location of the Gaming Machine;

(8) the proposed manner, time, and place of disposal; and

(9) any other information required by the Commission.

(b) Unless the Commission notifies the Person seeking to dispose of the Gaming Machine within 30 days of receipt of the notice required by this section, the method of disposal will be deemed approved.

(c) If the disposing of a Gaming Machine is not conducted in the presence of a Gaming Agent, the Person seeking to dispose of a Gaming Machine must submit to the Commission, within 10 days of disposal, a sworn affidavit verifying the date, time, place, and manner of disposal and the names of all Persons witnessing the disposal.

SUBCHAPTER 27. REQUIREMENTS FOR AUDITS PERFORMED BY GAMING AGENTS

325:85-27-1. Daily and spot audits

(a) The Commission, through its Gaming Agents or otherwise, is authorized to conduct a daily audit of gaming proceeds, drop count (which can include examination of full reports and records of specific machines as well as reports from the Racetrack Gaming Operator Licensee's Central Computer) and may also audit internal controls, surveillance procedures, audit procedures, compulsive gambling programs, and any other activities at the Gaming Facility. The Commission may further conduct full annual audits of gaming operations. Further, the Commission, through its Gaming Agents or otherwise, may conduct spot audits of games, machines, devices and the Central Computer system.

(b) Such audits shall be in addition to audits performed by the Commission and audits performed by the Office of the State Auditor and Inspector.

[OAR Docket #06-1144; filed 5-26-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 90. GAMING OPERATIONS

[OAR Docket #06-1145]

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EMERGENCY adoption
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325:90-1-2. [NEW]
Subchapter 3. Security and Surveillance Minimum Requirements [NEW]
325:90-3-1. [NEW]
325:90-3-2. [NEW]
325:90-3-3. [NEW]
325:90-3-4. [NEW]
325:90-3-5. [NEW]
325:90-3-6. [NEW]
Subchapter 5. Unresolved Patron Disputes [NEW]
325:90-5-1. [NEW]
325:90-5-2. [NEW]
325:90-5-3. [NEW]
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Subchapter 7. Smoking [NEW]
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INCORPORATIONS BY REFERENCE:
Not Applicable
FINDING OF EMERGENCY:
The Oklahoma Horse Racing Commission finds that compelling, extraordinary circumstances necessitate the emergency adoption of rules to OAC 325 *Rules for Racetrack Gaming*. The reasons for this finding are as follows:

1. In the time since approval of the original rules, some of the stakeholders - the racetracks and the horsemen's representative organizations - have contended that these original rules placed the racetracks and horsemen at a competitive disadvantage to Tribal casinos for the following reasons: a) the rules did not completely follow the language in the Act; b) further, the rules did not adequately address all of the authorized games; c) the rules introduced a stricter regulation that restricted the operation of the games, resulting in seemingly unnecessary regulation and language not found in the Act; and d) the original rules also set criteria and specifications regarding the functioning of the games that unfortunately did not allow for technological advances in the evolution of the authorized games.

2. These rules are being submitted under emergency rulemaking so that, if approved by Governor Henry, the rules can become effective May 11, 2006 - approximately 45 days sooner - rather than waiting for approval under permanent rulemaking which is projected to occur June 25, 2006. This difference in time can make a decidedly positive financial impact because the new rules are expected to bring more gaming dollars which, besides the increased assistance to education and more game options for the gaming participant, will directly impact a number of the stakeholders in the horse racing industry - the racetracks and the horsemen.

3. As such, it is in the best interest of the horse racing industry that the new rules for authorized gaming, which is expected to enhance horsemen's purses, begin as soon as practical. Further, It is in the best interest of the State as a whole that increased State revenues from the new rules for authorized gaming at the racetracks begin to accrue as soon as practical before the promulgation of the rules under permanent rulemaking. Therefore, **the Commission finds that a compelling public interest requires the adoption of emergency rules implementing the new rules for authorized gaming permitted under the State-Tribal Gaming Act.**

ANALYSIS:
On December 15, 2005, Chairman Calvert appointed an Ad Hoc Committee on Gaming Rules which addressed the concerns of some of the stakeholders [shown in detail under Findings of Emergency, Item 1, on previous page]. Membership on the Ad Hoc Committee included some of the key stakeholders. The Committee, chaired by Chairman Randy Calvert, consisted of three (3) Commissioners of the Oklahoma Horse Racing Commission [Commissioners Randy Calvert, Roger Cole and Patrick Grimmett], the Executive Director of the Horse Racing Commission [Constantin A. Rieger], the Commission Counsel [Neal Leader], one (1) representative of the Oklahoma Quarter Horse Racing Association [Debbie Schauf], one (1) representative of the Thoroughbred Racing Association of Oklahoma [Joe Lucas], racetrack representatives [Scott Daruty for Remington Park, Bob Rabon for Blue Ribbon Downs and Mark Enterline for Will Rogers Downs], Oklahoma Thoroughbred Association [R.D. Logan] and John Smicklas [Thoroughbred Owner]. Through a number of long meetings from December, 2005 through March, 2006, new rules were drafted. It was the Ad Hoc Committee on Gaming Rules' recommendation to the Horse Racing Commission on March 23, 2006 that the following rules be adopted under emergency rulemaking. The Commission then took action to adopt the emergency rules.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 7.5. O.S., SECTION 253(D):

SUBCHAPTER 1. GENERAL PROVISIONS

325:90-1-1. Purpose

The Rules in this chapter provide requirements and procedures for unresolved patron disputes and for compulsive gambling assistance plans which include minimum standards, employee training and annual reporting regarding compulsive gambling activities.

325:90-1-2. Definitions

Unless otherwise defined below, terms used in this chapter have the same meanings as set forth in the State-Tribal Gaming Act:

"Act" means the State-Tribal Gaming Act enacted by the people with passage of State Question 712.

"Authorized Games" means Electronic Amusement Games as defined in the Act, Electronic Bonanza-Style Bingo Games as defined in the Act, Electronic Instant Bingo Games as defined in the Act, Compact Electronic Games as defined in these Rules, and Non-Compact Electronic Games as defined by these Rules.

"Commission" means the Oklahoma Horse Racing Commission.

"Executive director" means the executive director of the Commission.

"Gaming agent" means a Commission agent trained in machine gaming, responsible for on-site enforcement of the Act and these rules and other regulatory responsibilities as assigned by the Executive Director.

"Gaming employee" means any employee of a Racetrack Gaming Operator Licensee who works in any capacity within the confines of the Gaming Facility.

"Gaming employee license" means a license issued to a Gaming Employee by the Commission.

"Gaming facility" means that area within an Organization Licensee's Racetrack Premises approved by the Commission that has been set aside for the use of Authorized Games and related activities and access to which is limited to patrons 18 years of age or older.

"Minor" means any individual less than eighteen (18) years of age.

"Organization license" means a license issued by the Commission which authorizes the licensee to conduct a race meeting in Oklahoma and accept pari-mutuel wagers on the outcome of live and simulcast horse racing.

"Organization licensee" means any Person receiving an Organization License issued by the Commission.

"Person" means any individual, partnership, corporation, or other association or entity.

"Racetrack gaming operator license" means a license issued by the Commission which authorizes an Organization Licensee to conduct Authorized under the regulation, implementation and enforcement of the Commission.

"Racetrack gaming operator licensee" means any Organization Licensee which has been issued a Racetrack Gaming Operator License by the Commission.

"Racetrack premises" means the property that is owned or leased by the Organization Licensee that is used for racetrack purposes.

"Rule" means the Commission's *Rules for Racetrack Gaming*.

SUBCHAPTER 3. SECURITY AND SURVEILLANCE MINIMUM REQUIREMENTS

325:90-3-1. Surveillance Systems

(a) Each Racetrack Gaming Operator Licensee must install, maintain and continuously operate an on-site surveillance system at its licensed Gaming Facility. The purpose of the surveillance system is to assist the Racetrack Gaming Operator Licensee and the State in safeguarding the Licensee's assets, in deterring, detecting and prosecuting criminal acts, and in maintaining public confidence and trust that licensed gaming activity is conducted honestly and free of criminal elements and activity.

(b) The surveillance system plan must include descriptions of all equipment used by the surveillance system, a blueprint or diagram that shows all of the areas to be monitored and the placement of surveillance equipment in relation to the activities being observed, a description of the procedures used in the operation of the surveillance system, and any other information required by the Commission. To ensure the integrity of the surveillance system, access to the surveillance system plan, and any related information, shall be limited to authorized employees or agents of the Racetrack Gaming Operator Licensee and the Commission.

(c) The surveillance system, through the use of fixed and moveable cameras, must possess the ability to monitor and record the Gaming Facility floor and all Player Terminals from multiple angles to ensure the Racetrack Gaming Operator Licensee's ability to monitor and record all activities at each Player Terminal. The surveillance system must provide sufficient clarity to permit identification of players, employees, patrons and spectators. Each camera shall be installed in a manner that prevents it from being readily obstructed, tampered with, or disabled by customers or employees.

(d) Employees of the Racetrack Gaming Operator Licensee, when assigned to monitoring duties in the surveillance room, shall have no other gaming related duties while performing such duties.

(e) The interior of the surveillance room shall not be visible or accessible to the public.

(f) Agents of the Commission's Law Enforcement Division, upon presentation of proper Commission credentials, shall be provided immediate access to the surveillance room and other surveillance areas. In addition, these Agents are to be provided, upon request, copies of recorded videotapes of activities as well as copies of any images produced on a video printer. Agents of the Commission's Law Enforcement Division shall have absolute, unfettered access to the surveillance room at all times.

(g) Except in the event of circumstances beyond the reasonable Control of the Licensee or unless authorized by the Commission, the surveillance room shall be maintained at all times by a sufficient number of approved surveillance operators as reflected in the security plan approved by the Commission. The

Executive Director, after consultation with the Commission's Director of Law Enforcement, may require additional surveillance personnel should the Executive Director determine that an inadequacy of surveillance monitoring exists.

(h) Before implementing any material changes to a surveillance system that affects the approved security plan, the Racetrack Gaming Operator Licensee must submit the proposed changes to the Commission's Director of Law Enforcement for approval.

(i) A Racetrack Gaming Operator Licensee must notify a Gaming Agent immediately of any failure of the surveillance system to continuously monitor the Gaming Facility or to otherwise operate properly. The Commission may require temporary suspension of gaming activities until the surveillance system is restored.

325:90-3-2. Security and Surveillance Logs

(a) The Racetrack Gaming Operator Licensee shall maintain a surveillance log(s) approved by the Commission's Director of Law Enforcement. The log(s) shall be maintained by surveillance room personnel in the surveillance room. The Commission's Law Enforcement Division staff and other Commission staff authorized by the Director of Law Enforcement shall have access at all times to the log(s). A log(s) entry shall be made in the surveillance log(s) of each surveillance activity. The following information shall be recorded in the surveillance log(s):

(1) the names of all Persons entering or exiting the surveillance room;

(2) a summary, including the date and time each surveillance activity commenced and terminated;

(3) record of any equipment or camera malfunctions;

(4) description of the activity observed or performed; and

(5) any additional information as required by the Commission's Director of Law Enforcement or Gaming Agent.

(b) The Racetrack Gaming Operator Licensee shall maintain a security log of any and all unusual occurrences for which the assignment of a security department employee is made. Each incident, without regard to materiality, shall be assigned a sequential number and an entry made in the log(s) containing, at a minimum, the following information:

(1) the assignment number;

(2) the date of the incident;

(3) the time of the incident;

(4) the location of the incident;

(5) the nature of the incident;

(6) the Person(s) involved in the incident; and

(7) the security department employee(s) assigned.

325:90-3-3. Storage and retrieval of surveillance recordings

(a) All surveillance recordings shall be retained for at least seven days, unless these Rules provide otherwise, and shall be listed on a log by surveillance personnel with the date, times, and identification of the Person monitoring or changing the tape or other recording medium in the recorder. Original surveillance recordings will be released to the Commission's Law Enforcement Division upon demand.

(b) Any surveillance recording of illegal or suspected illegal activity shall, upon completion of the tape or other recording medium, be removed from the recorder and etched or otherwise labeled in a manner as approved by the Commission's Director of Law Enforcement with date, time and identity of surveillance personnel. The recordings shall be placed in a separate, secure area and notification given to the Commission's Law Enforcement Division.

(c) All surveillance recordings relating to the following shall be retained in a secure area approved by the Commission Director of Law Enforcement for at least 15 days and shall be listed on a log maintained by surveillance personnel:

(1) all count room areas;

(2) the vault area;

(3) all credit and fill slip confirmation recordings; and

(4) any areas with cashiers or where the patrons go to cash out vouchers.

325:90-3-4. Maintenance and testing

The Racetrack Gaming Operator Licensee shall be responsible to ensure that any malfunction of surveillance equipment shall be immediately repaired or replaced with a working unit. If immediate replacement is not possible, alternative live monitoring must be provided by the Racetrack Gaming Operator Licensee's security personnel; otherwise, gaming in the unmonitored area(s) of the Gaming Facility must be immediately ceased.

325:90-3-5. Surveillance system compliance

The Racetrack Gaming Operator Licensee shall have a continuing duty to review its surveillance system plan to ensure the surveillance system plan remains in compliance with provisions of the Act and Commission Rules.

325:90-3-6. Commission office

The Racetrack Gaming Operator Licensee shall provide a private on-site office for use by the Commission and its Gaming Agents with the same surveillance monitoring capability as is available to the Racetrack Gaming Operator Licensee's surveillance staff.

SUBCHAPTER 5. UNRESOLVED PATRON DISPUTES

325:90-5-1. Unresolved Patron Disputes

(a) This Subchapter deals with disputes between the Racetrack Gaming Operator Licensee and a patron involving a game outcome, prize, fee paid or other aspect of a player's use of an Authorized Game. In the event a dispute arises with a patron and the dispute is not resolved to the patron's satisfaction within two hours, the Racetrack Gaming Operator Licensee must notify the patron that the patron has a right to contact a Gaming Agent regarding the dispute.

(b) A Racetrack Gaming Operator Licensee must immediately notify the Gaming Agent if the Racetrack Gaming Operator Licensee refuses to pay alleged winnings to a patron and the Racetrack Gaming Operator Licensee and the patron are unable to resolve the dispute to the patron's satisfaction within two hours. This notice, which must be in writing, shall include the following information:

(1)The name, address and phone number of the patron.

(2) The nature of the dispute.

(3) The amount of money involved in the dispute.

(4) The number of machines involved and the name of the game involved.

(c) Upon receipt of such notice, the Gaming Agent may assist the parties in trying to resolve the dispute. Patron disputes not resolved to the patron's satisfaction within 48 hours of the occurrence of the dispute shall be decided by the Commission in the following manner. The initial determination of unresolved disputes involving $500.00 or less will be made by the Gaming Agent. The Gaming Agent will conduct whatever review he/she deems necessary and will determine whether payment should be made to the patron. The determination shall be based on a review of all available surveillance tapes, Gaming Machine records, and required written statements from both the Racetrack Gaming Operator Licensee and the patron. The Racetrack Gaming Operator Licensee shall make all audio/visual tapes and records available to the Gaming Agent with failure to do so resulting in an automatic decision in favor of the patron.

(d) The Gaming Agent's determination shall be made in writing and state the factual and legal basis for the decision unless both the Racetrack Gaming Operator Licensee and the patron waive this requirement and agree to an expedited verbal decision by the Gaming Agent. Expedited, verbal decisions shall be final and unappealable, and the patron shall be advised of this fact before waiving his/her right to a written determination. Written decisions are appealable to the Executive Director, and the Executive Director's decision is appealable to the District Court under the provisions of the Oklahoma Administrative Procedures Act.

(e) Unresolved disputes involving more than $500.00 will be initially decided by the Executive Director. The Executive Director's decision in all instances shall be in writing and shall be based on a review of all available surveillance tapes, Gaming Machine records, required written statements from both the Racetrack Gaming Operator Licensee and the patron. The Executive Director's decision may be appealed to the Commission and thereafter to the District Court under the provisions of the Oklahoma Administrative Procedures Act.

325:90-5-2. Compulsive Gambling Assistance Plan

(a) An applicant for a Racetrack Gaming Operator License must submit with the application a plan to address compulsive gambling in accordance with the requirements of these regulations for assisting in the prevention and education of compulsive gambling.

(b) No Racetrack Gaming Operator License application will be approved unless the Commission first approves the applicant's compulsive gambling assistance plan.

(c) Failure to implement the compulsive gambling assistance plan or to satisfactorily maintain and administer a plan once implemented will be grounds for suspension or revocation of the Racetrack Gaming Operator License, assessment of a fine, or both.

(d) A plan must meet or exceed the minimum standards set forth in these Rules. The development of such a plan by the applicant and the approval of a plan by the Commission are conditions of issuance of the original Racetrack Gaming Operator License. The maintenance of a plan, as approved by the Commission, is a condition of annual renewal of the license.

325:90-5-3. Minimum standards for Compulsive Gambling Assistance Plan

(a) The compulsive gambling assistance plan must include all of the following elements unless the applicant or Racetrack Gaming Operator Licensee obtains a written waiver of any element from the Commission:

(1) Identification of a plan manager or other Person responsible for ensuring that a plan is implemented and administered by the Racetrack Gaming Operator Licensee and monitored to maintain the minimum standards established by these rules;

(2) A mission statement that identifies the goals of the Racetrack Gaming Operator Licensee in administering a plan;

(3) Policies concerning the handling of compulsive gambling problems, commitment to training, intervention, the employee's role and duties, management's role and duties, and the patron's responsibilities;

(4) Procedures to determine appropriate intervention techniques in a given circumstance, and carrying out the intervention techniques;

(5) Printed materials to educate patrons about compulsive gambling and inform them of local and Statewide resources available to compulsive gamblers and their families. The materials may include signs and posters located inside the licensed premises and brochures discussing compulsive gambling issues and sources of treatment and information. A plan must also specify a source of the printed materials and proposed distribution methods;

(6) Policy and procedures that prohibit facilitating, participating in, or allowing the issuance of any loans or extension of credit to a patron for gaming purposes;

(7) A comprehensive Gaming Employee and on-site Key Executive training program satisfactory to the Commission, including training manuals and other materials necessary to educate employees about compulsive gambling issues; the training plan must include instruction in the psychology of the compulsive gambling, methods of recognizing compulsive gambling behavior, intervention techniques and other subjects as determined by the Commission;

(8) Completion and submission of a form certifying to the Commission's satisfaction that each employee required to obtain the training has done so within the time period specified by these Rules;

(9) Details of a follow-up training program to periodically reinforce employee training;
(10) Estimated costs for implementation and administration;
(11) Timetable and procedures for implementing the compulsive gambling assistance plan. A plan must be implemented no later than thirty (30) days from the date gaming commences on the licensed premises;
(12) Preventing gaming by Minors; and
(13) Any other policies and procedures designed to encourage responsible gaming that the applicant or Racetrack Gaming Operator Licensee wishes to include.

325:90-5-4. Employee training regarding Compulsive Gambling Assistance Plan

(a) The compulsive gambling assistance plan must be designed with employee training and education as fundamental aspects of a plan. The purpose of the training is to develop awareness of compulsive gambling and to provide resources to assist the employee in handling compulsive gambling issues.
(b) The employee training program must include training and materials on the following topics:
(1) characteristics and symptoms of compulsive gambling behavior;
(2) prevalence of compulsive gambling in the general population;
(3) relation of compulsive gambling to other addictions;
(4) social costs of compulsive gambling, such as indebtedness, costs for treatment, suicide, criminal behavior, lost jobs, and counseling for family problems;
(5) identification of vulnerable populations, including women, low-income patrons, the elderly and Persons who abuse drugs and alcohol;
(6) intervention techniques to be employed where a compulsive gambling problem is identified or suspected; and
(7) assistance and referral programs, including specific resources and training on how to discuss compulsive gambling with a patron and give advice concerning access to available services.
(c) Training must be conducted within thirty (30) days of the employee's hire date. Certification of such training must be submitted on a form approved by the Commission. Failure to submit the required certification may result in administrative action against the Racetrack Gaming Operator Licensee.

325:90-5-5. Annual report regarding Compulsive Gambling Activities

Each Racetrack Gaming Operator Licensee must submit to the Commission, initially six months following the commencement of gaming activities and thereafter by March 31 annually, a report detailing the Racetrack Gaming Operator Licensee's compulsive gambling activities for the previous calendar twelve month period ending December 31.

SUBCHAPTER 7. SMOKING REGULATIONS

325:90-7-1. Requirements for smoking in Gaming Facility

The gaming areas of the premises of an Organization Licensee and, except for the off-track wagering facilities specified in Section 205. 6a of Title 3A of the Oklahoma Statutes, the areas where simulcast wagering is conducted by an Organization Licensee shall not be subject to the provisions of Section 1247 of Title 21 of the Oklahoma Statutes or to the provisions of the Smoking in Public Places and Indoor Workplaces Act (FNI) if the following conditions are met:
(1) Each gaming or simulcast area in which smoking is permitted shall be fully enclosed, directly exhausted to the outside, under negative air pressure so smoke cannot escape to nonsmoking areas when a door is opened, and no air from a smoking area is recirculated to nonsmoking areas of the building; and
(2) No exhaust from such gaming or simulcast area shall be located within twenty-five (25) feet of any entrance, exit, or air intake.

[OAR Docket #06-1145; filed 5-26-06]

TITLE 585. PUBLIC EMPLOYEES RELATIONS BOARD
CHAPTER 20. OKLAHOMA MUNICIPAL EMPLOYEE COLLECTIVE BARGAINING ACT

[OAR Docket #06-1075]

RULEMAKING ACTION:
EMERGENCY adoption
RULES:
Subchapter 1. General Provisions [NEW]
585:20-1-1. Purpose [NEW]
585:20-1-2. Matters Not Covered [NEW]
Subchapter 3. Procedures [RESERVED]
Subchapter 5. Prohibited Practice Charges [NEW]
585:20-5-1. Process [NEW]
585:20-5-2. Complaint [NEW]
585:20-5-3. Answer [NEW]
Subchapter 7. Representation Petitions [NEW]
585:20-7-1. Petition for election [NEW]
585:20-7-2. Petition for representation without an election [NEW]
585:20-7-3. Determination of collective bargaining unit [NEW]
AUTHORITY:
Public Employees Relations Board; 11 O.S. § 51-204
DATES:
Adoption:
April 24, 2006
Approved by Governor:
May 18, 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:

Senate Bill 1529 enacted a new section of law entitled the Oklahoma Municipal Employee Collective Bargaining Act, effective November 1, 2004. Emergency rules were adopted by the Public Employees Relations Board pursuant to 11 O.S.Supp.2004, Section 51-204(4)) to carry out the purposes of the Act. The constitutionality of the Act was challenged. The Oklahoma Supreme Court held the Act to be constitutional in *City of Enid v. Public Employees Relations Board*, 2006 OK 16. Because the previous emergency rules have expired, a compelling public interest requires the promulgation of these emergency rules to carry out and promote the purpose and intent of the Act. The promulgation of these emergency rules will further the compelling public interest as set forth in Senate Bill 1529 by setting forth the methods by which municipal employees have the right to organize and choose representatives for the purpose of collective bargaining.

ANALYSIS:

Pursuant to the direction and authority detailed in the Municipal Employees Collective Bargaining Act, specifically 11 O.S. § 51-204(4), the Public Employees Relations Board, in cooperation with representatives of public employee organizations and representatives of municipal employers, have proposed emergency rules necessary to carry out the purposes of the Municipal Employees Collective Bargaining Act. The proposed emergency rules do the following:

1. In Rule OAC 585:20-1-1, the Board states that the rules are intended to serve as an aid to the efficient operation of the Public Employees Relations Board in the orderly administration of the Municipal Employees Collective Bargaining Act.
2. In Rule OAC 585:20-1-2, the Board specifically states that matters not covered in these rules will be handled as provided in the permanent rules implementing the Fire and Police Arbitration Act.
3. In Rule OAC 585:20-3-1, the Board sets forth the procedure for selecting an arbitrator if an impasse in negotiations occurs between the parties.
4. In Rule OAC 585:20-5-1, the Board states that a prohibited practice charge under the Municipal Employees Collective Bargaining Act will be handled in the same manner by the Public Employees Relations Board as an unfair labor practice charge is handled under the Fire and Police Arbitration Act.
5. In Rule OAC 585:20-5-2, the Board states that a complaint is untimely if filed more than six (6) months after the alleged prohibited practice, which is consistent with the provisions of the Municipal Employees Collective Bargaining Act.
6. In Rule OAC 585:20-5-3, the Board states that the respondent will file a written answer to a prohibited practice complaint within ten (10) days, which is consistent with the time limitation set forth in the Municipal Employees Collective Bargaining Act.
7. In Rule OAC 585:20-7-1, the Board establishes who may request a representative or de-certification election and further sets forth the contents which should be contained in the petition for election.
8. In Rule OAC 585:20-7-2, the Board sets forth who may file a petition for representation without election and the matters which should be in the petition. The rule also sets forth the process which should be followed for a petition for representation without an election and how the Board will certify the representation. The rule further sets forth the manner in which the Board will handle a bargaining unit dispute.
9. In Rule OAC 585:20-7-3, the Board describes how it will make a determination of the collective bargaining unit and sets forth relevant factors to be considered in making the determination. These factors are also contained in the Municipal Employees Collective Bargaining Act.

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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

585:20-1-1. Purpose

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; and are intended as aids to the efficient operation of the Public Employees Relations Board, to the orderly administration of the Municipal Employees Collective Bargaining Act (The Act) and to provide meaningful avenues for realizing and enforcing statutory rights and obligation of certain public employees, public employee organizations, and the municipal employers of this state.

585:20-1-2. Matters not covered

Matters not specifically covered by these Rules will be handled as provided in the permanent rules implementing the Fire and Police Arbitration Act (FPAA), found at OAC 585: 1-1-1 e seq. If there is a conflict between the provisions of these rules and the provisions of OAC 585: 1-1-1 et seq., the provisions of these rules will prevail and control.

SUBCHAPTER 3. PROCEDURES [RESERVED]

SUBCHAPTER 5. PROHIBITED PRACTICE CHARGES

585:20-5-1. Process

Except when a different procedure is required by the Municipal Employees Collective Bargaining Act or these rules, a prohibited practice charge will be handled in the same manner as an unfair labor practice charge is handled under the provisions of OAC 585:1-1-1 et seq.

585:20-5-2. Complaint

A complaint shall be deemed untimely and shall be dismissed if filed with the Board more than six (6) months following the alleged prohibited practice.

585:20-5-3. Answer

A respondent shall file a written answer, or other responsive pleading permitted by these rules, to a prohibited practice complaint within ten (10) days after service of the complaint.

SUBCHAPTER 7. CERTIFICATION CASES; REPRESENTATION PETITIONS

585:20-7-1. Petition for election

(a) **Who may file.** A representation or decertification petition may be filed with the Board by:

(1) An employee or employee organization alleging that thirty percent (30%) of the non-fire and police municipal employees in an appropriate bargaining unit wish to be represented for collective bargaining by an employee representative; or,

(2) An employee organization alleging that fifty percent (50%) of the municipal employees in an appropriate bargaining unit assert that the designated exclusive bargaining representative no longer represents a majority of the municipal employees in the unit.

(b) **Contents of petition.**

(1) **For certification.** A petition for certification shall contain those things required by Section 585:15-3-1(b)(1) & (b)(2) of the permanent rules implementing the FPAA.

(2) **For decertification.** A petition for decertification shall contain a description of the bargaining unit subject to the petition and a statement that a majority of the employees within the claimed bargaining unit do not want to be represented by the exclusive bargaining representative or seek certification of a different employee organization and have sufficient authorization cards or other evidence to substantiate it.

585:20-7-2. Petition for representation without an election

(a) **Who may file.** A petition for representation without an election may be filed with the Board by an employee organization alleging that a majority of the municipal employees in an appropriate bargaining unit wish to be represented for collective bargaining by the employee organization.

(b) **Contents of petition.** A petition shall contain the following:

(1) The name and affiliation of the employee organization.

(2) The name and address of the municipal employer.

(3) A description of the bargaining unit the petitioner claims to be appropriate and a statement that the petitioner is authorized to represent a majority of the employees within the claimed unit and has sufficient authorization cards or other evidence to substantiate it.

(4) The names and addresses of any other exclusive representative employee organizations, known to the petitioner, who claim to represent any employees within the alleged appropriate unit.

(5) The number of employees in the alleged appropriate unit.

(6) Any other relevant fact or facts.

(c) **Process.**

(1) Within two (2) business days of receiving a petition for representation without an election, the Board shall direct the municipal employer to post copies of a notice to all employees in places where notices are normally posted for the employees affected by issues raised in the petition and/or to distribute copies of a notice in the usual manner for distribution. The municipal employer must post the notice in accordance with Board's direction within two (2) days of receiving such direction.

(2) The notice shall advise affected employees about the employee organization's petition for representation without an election.

(3) The notice shall be posted for ten (10) days.

(d) **Certification and disposition.**

(1) If the Board does not receive a claim for representation accompanied by a thirty percent (30%) showing of interest from a rival employee organization within fifteen (15) calendar days of the filing of the initial petition, it shall issue a certification of representation upon validating that a majority of employees in an appropriate bargaining unit have authorized the employee organization to represent them for purposes of collective bargaining. For any petition filed on or after the effective date of these emergency rules, such validation shall be accomplished through use of authorization forms prescribed by the Board containing the signatures of the employees.

(2) If the Board receives a valid claim for representation by a rival employee organization within the fifteen (15) day period, it shall consider the initial petition for representation without an election as a petition for a representation election.

(e) **Bargaining unit disputes.**

(1) If the petition and the municipal employer agree on the organizational structure of the appropriate unit but disagree as to which employees are included in the appropriate unit based on the duties of the individual employee(s) (such as, but not limited to, supervisory, confidential, or management official designations), the Board shall first determine if the dispute affects the employee organization's majority status. If such dispute does not affect the petitioner's majority status, the Board shall issue a certification without an election and subsequently hold a hearing to determine if the challenged employees are included in the appropriate unit.

(2) If the bargaining unit dispute affects the employee organization's majority status, the Board shall make a determination of the appropriate bargaining unit and subsequently determine majority status.

585:20-7-3. Determination of collective bargaining unit

The Board shall decide in each case before it, the unit appropriate for the purpose of collective bargaining. If either the municipal employer or a proposed bargaining representative raises an issue concerning the appropriate bargaining unit, the Board shall consider, ". . . *along with other relevant factors, the desires of the employees, the community of interest including the existence of clearly identifiable crafts among employees, wages, hours, and other working conditions, the effect of over-fragmentation, the administrative structure of the municipal employer, the recommendation of the parties and the history of collective bargaining.*" [11 O.S., §51-210(C)]

[OAR Docket #06-1075; filed 5-25-06]

Permanent Final Adoptions

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

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

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

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

TITLE 10. OKLAHOMA ACCOUNTANCY BOARD
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #06-1154]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
10:1-1-4.1. [AMENDED]
AUTHORITY:
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DATES:
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March 17, 2006
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The amended rule changes the agency's hours of operation from 8:30 a.m. to 5:00 p.m. to 8:00 a.m. to 5:00 p.m.
CONTACT PERSON:
Edith Steele (405) 521-2397

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.8(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

10:1-1-4.1. Board office

The Board maintains an office in Oklahoma City, Oklahoma. The Board office is open five (5) days a week, Monday through Friday, from ~~8:30~~ 8:00 A.M. until 5:00 P.M. The Board office is closed on Saturday and Sunday and state legal holidays as set out in Section 82.1 of Title 25 of the Oklahoma Statutes.

[OAR Docket #06-1154; filed 5-26-06]

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

[OAR Docket #06-1155]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
10:15-1-2. [AMENDED]
Subchapter 18. Computer-Based Examination
10:15-18-4. [AMENDED]
10:15-18-9. [AMENDED]
Subchapter 27. Fees
10:15-27-13. [AMENDED]
Subchapter 29. Continuing Professional Education [REVOKED]
10:15-29-1.1. [REVOKED]
10:15-29-3. [REVOKED]
10:15-29-4. [REVOKED]
10:15-29-5. [REVOKED]
10:15-29-6. [REVOKED]
10:15-29-7. [REVOKED]
10:15-29-8. [REVOKED]
10:15-29-9. [REVOKED]
10:15-29-10. [REVOKED]
Subchapter 30. Continuing Professional Education
10:15-30-1. [AMENDED]
10:15-30-2. [AMENDED]
10:15-30-3. [AMENDED]
10:15-30-4. [AMENDED]
10:15-30-5. [AMENDED]
10:15-30-6. [AMENDED]
10:15-30-7. [AMENDED]
10:15-30-8. [AMENDED]
10:15-30-9. [NEW]
Subchapter 32. Standards For Continuing Professional Education (CPE) Programs
10:15-32-5. [AMENDED]
Subchapter 33. Peer Review
10:15-33-1. [AMENDED]
10:15-33-2. [AMENDED]
10:15-33-3. [AMENDED]
10:15-33-3.1. [NEW]
10:15-33-5. [AMENDED]
10:15-33-6. [AMENDED]
10:15-33-7. [AMENDED]
Subchapter 39. Rules of Professional Conduct
10:15-39-1. [AMENDED]

Subchapter 43. Audits Performed in Accordance with Government Auditing Standards [NEW]
10:15-43-1. [NEW]
10:15-43-2. [NEW]
10:15-43-3. [NEW]
10:15-43-4. [NEW]
10:15-43-5. [NEW]
10:15-43-6. [NEW]

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Oklahoma Accountancy Board, 59 O.S. Section 15.5.B.6

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SUPERSEDED EMERGENCY ACTIONS:
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
Substantive amendments to the general provisions rules provide definitions for active, inactive and retired status of registrants, which are now needed because of the requirement in Section 15.35.C and D of the Oklahoma Accountancy Act (Act) that all certificate and license holders complete continuing professional education (CPE) unless otherwise exempt. Amendments to the computer-based examination rules strike the requirement that an accredited college or university must be listed in the Directory of Post Secondary Schools as published by the U.S. Department of Education, or its successor. The amendment also allows for a two-year accredited college or university as well as a four-year institution. Another amendment provides that examination grades will be certified in accordance with Board policy. The portal convenience fee is revoked. The rules in Subchapter 29 are being revoked because they were replaced by Subchapter 30 effective January 1, 2006. Substantive changes to the CPE rules clarify the date of completion of a CPE course and allow registrants 60 days to obtain from the sponsors certificates of completions or letters attesting to their completion of the courses they take to meet the CPE requirement. Also, a requirement is added that a minimum of 8 hours in the areas of taxation, accounting, or assurance be earned each year by registrants who hold permits to practice public accounting but whose main area of employment is industry. Another amendment to the CPE rules clarifies in accordance with Section 15.35.C of the Act that all certificate and license holders, not just permit holders, must comply with CPE reporting requirements, unless exempted for good cause. This allows the OAB to exempt a registrant from the CPE requirement for good cause, such as a catastrophic or debilitating illness. A provision is added to the CPE rules specifying the requirements for inactive status registrants who are returning to active status and clarifying the time frame in which the CPE must be earned. CPE requirements will be pro-rated based on the length of time the registrant was inactive. Amendments to the CPE standards provide limits to the amount of CPE credit that can be claimed for teaching college or university courses. Substantive amendments to the peer review rules provide that the OAB may approve standards promulgated by other qualifying sponsoring organizations as well as those of the American Institute of Certified Public Accountants (AICPA). A requirement is added that any firm or individual that performs peer reviews for registrants in Oklahoma must be registered with the OAB and hold a permit to practice public accounting. Another amendment allows members of the Peer Review Committee to serve as a member of the AICPA's or any state's CPA society's Peer Review Committee after a period of twelve months following that individual's service on the Peer Review Committee. This is a decrease from the eighteen months previously required. Substantive amendments to the rules of professional conduct add the requirement that registrants observe, where applicable, governmental auditing standards and the standards as set by the Public Company Auditing Oversight Board and that registrants hold the affairs of their employers in confidence. Amendments also clarify that all registrants, not just permit holders, have a duty to abide by the Rules of Professional Conduct. A new subchapter on audits perform in accordance with government auditing standards is added to clarify for registrants a process that has been in place for many years. These rules provide a procedure for registering to perform such audits, for the OAB to evaluate the qualifications of those wishing to register, for notification of the approval or denial of such registrations, for denials of registrations, for Board review of denied registrations, and for the renewal of registrations.

CONTACT PERSON:
Edith Steele (405) 521-2397

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.8(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

10:15-1-2. Definitions

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

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

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

"Act" means the Oklahoma Accountancy Act, Oklahoma Statutes, Title 59, §§ 15.1 through 15.38, dealing with the practice of public accountancy in Oklahoma.

"Active" when used to refer to the status of a registrant, describes an individual who possesses a certificate or license and who has not otherwise been granted "retired" or "inactive" status.

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

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

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

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

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

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

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

"CPE" means continuing professional education.

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

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

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

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

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

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

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

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

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

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

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

"Inactive" used to refer to the status of a registrant who is exempt from complying with the CPE requirements as provided in Subchapter 10:15-30-8(a) (2), (3) and (4). However, inactive status does not preclude volunteer services for which the inactive registrant receives no direct or indirect compensation so long as the inactive registrant does not sign any documents related to such services as a CPA or PA.

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

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

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

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

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

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

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

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

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

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

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

(A) A self-assessment of the gap between current and needed knowledge, skills, and abilities;

(B) A set of learning objectives arising from this assessment; and

(C) Learning activities to be undertaken to fulfill the learning plan.

"Licensee" means an individual designated as a CPA, PA, or equivalent designation in another state.

"Management information system (MIS)" means a computer or manual system, or a group of systems, within an organization that is responsible for collecting and processing data to ensure that all levels of management have the information needed to plan, organize, and control the operations of the organization and to meet both internal and external reporting requirements.

"NASBA" means National Association of State Boards of Accountancy.

"New CPAs and PAs" refers to individuals who are initially certified or licensed in Oklahoma as the result of successfully completing the examination, including those individuals certified or licensed as the result of transferring all credits earned on an examination from another jurisdiction.

"Office" means a building, room, or series of rooms which are owned, leased, or rented by an individual or firm for the purpose of holding out or carrying out the practice of public accounting.

"Organization" includes a corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, limited liability company, sole proprietorship, an association, two or more persons having a joint or common interest, an employer of CPAs or PAs, or any other legal or commercial entity.

"Other compensation" means compensation, including remuneration based on a percentage of the amounts involved received by a registrant who is engaged in the practice of public accounting for other than the performance of professional services or for the sale or referral of products or services of third parties.

"Other professional standards" means those standards as defined by Statements on Management Advisory Services, Statements on Responsibilities in Tax Practice, Statements on Standards for Accounting and Review Services and Statements of Quality Control Standards, where applicable, issued by the American Institute of Certified Public Accountants.

"Overview" means learning activity level that provides a general review of a subject area from a broad perspective. These programs may be appropriate for professionals at all organizational levels.

"Period of professional engagement" means the period during which professional services are provided, with such period starting when the registrant begins to perform professional services requiring independence and ending with the notification of the termination of that professional relationship by the registrant or by the client.

"Personal development" means a field of study that covers such skills as communications, managing the group process, dealing effectively with others, interviewing, counseling, and career planning.

"Pilot test" means sampling of at least three independent individuals representative of the intended participants to measure the average completion time to determine the recommended CPE credit for self-study programs.

"Principal place of business" means that physical location identified by a licensee to a state's accountancy regulatory agency where substantial administrative or management activities are conducted. For purposes of "Substantial Equivalency" the physical location cannot be in the State of Oklahoma.

"Professional competence" means having requisite knowledge, skills, and abilities to provide quality services as defined by the technical and ethical standards of the profession. The expertise needed to undertake professional responsibilities and to serve the public interest.

"Program of learning" means a collection of learning activities that are designed and intended as continuing education and that comply with these standards.

"Reinforcement feedback" means specific responses to correct answers to questions in self-study programs. Such feedback restates why the answer selected was correct.

"Related individual" includes spouses, and dependent persons, whether or not related for all purposes of complying with the Rules of Professional Conduct, provided that the independence of the registrant and the firm of the registrant will not normally be impaired solely because of employment of a spouse or dependent person by a client if the employment is in a position that does not allow "significant influence" over the operating, financial, or accounting policies of the client. In the event such employment is in a position in which the activities of the related individual are audit-sensitive, even though not a position of significant influence, the registrant should not participate in the engagement.

"Renewal permit" refers to a permit applied for prior to the expiration of the current permit.

"Retired" means a registrant who holds a certificate or license and verifies to the Board that the registrant is no longer

employed. However, retired status does not preclude volunteer services for which the retired registrant receives no direct or indirect compensation so long as the retired registrant does not sign any documents related to such services as a CPA or PA.

"Self-study program" means an educational process designed to permit a participant to learn a given subject without major involvement of an instructor. Self-study programs use a pilot test to measure the average completion time from which the recommended CPE credit is determined.

"Sole Proprietorship" means an unincorporated business enterprise which is owned entirely by one (1) certificate or license holder.

"State" means the District of Columbia, any state, or territory of the United States.

"Update" means learning activity level that provides a general review of new developments. This level is for participants with a background in the subject area who desire to keep current.

SUBCHAPTER 18. COMPUTER-BASED EXAMINATION

10:15-18-4. Educational requirements

(a) An applicant shall show, to the satisfaction of the Board, that the applicant has graduated from an accredited two-year or four-year college or university. ~~listed in the Directory of Post Secondary Schools as published by the U.S. Department of Education, or its successor.~~

(1) As to an applicant whose college credits are reflected in quarter hours, each quarter hour of credit shall be considered as two-thirds (2/3) of one (1) semester hour when determining semester hour credits necessary to qualify for examination or transfer of credits.

(2) When determining eligibility based on educational qualifications, the Board shall consider only educational credit reflected on official transcripts from an accredited two-year or four-year college or university. ~~listed in the Directory of Post Secondary Schools as published by the U.S. Department of Education,or its successor~~.

(3) The specific requirement that each applicant shall have completed at least one (1) course in auditing may only be satisfied with an auditing or assurance course taken for credit from an accredited two-year or four-year college or university. ~~listed in the Directory of Post Secondary Schools as published by the U.S. Department of Education, or its successor~~.

(b) When determining eligibility of an applicant for qualification, the Board shall not consider any combination of education and experience.

(c) The Board will also consider an applicant who has graduated from a college or university located outside the United States if an educational evaluation performed by a national credential evaluation service, as approved by the Board, certifies in writing that the applicant's course of study and degree are equivalent to the requirements set forth in Section 15.8 of the Act.

(d) On and after July 1, 2003, one hundred fifty (150) semester hours or its equivalent of collegiate education is required to qualify for any examination as set forth in Section 15.8.C. of the Oklahoma Accountancy Act. Any MIS or AIS course, or derivative thereof, as defined in Code 10:15-18-13, used by the applicant to qualify must have a substantial relationship, either direct or indirect, to the accounting profession. However, only AIS courses will qualify for the core accounting courses as required in Section 15-8.C.

(e) Any candidate who has qualified to take the examination on the basis of education prior to July 1, 2003, as provided in Section 15.8.B, is not subject to subparagraph (d) of this subsection.

10:15-18-9. Notification of grade

Each candidate shall be advised of the grade earned in each test section for which the candidate was examined. The names of candidates who have been granted credit for all test sections of the CPA and PA examination will be made public after the ~~Board certified the grades.~~ grades have been certified in accordance with Board policy.

SUBCHAPTER 27. FEES

10:15-27-13. Portal convenience fees [REVOKED]

~~There shall be a portal convenience fee charge of three and one half percent (3.5%) of the total remittance for use of on-line services.~~

SUBCHAPTER 29. CONTINUING PROFESSIONAL EDUCATION [REVOKED]

10:15-29-1.1. Burden of proof [REVOKED]

~~The burden of proof rests solely upon the registrant to demonstrate to the satisfaction of the Board, in accordance with the Oklahoma Accountancy Act, that all continuing education courses reported meet all of the requirements as to content and subject matter related to the profession and enhances the registrant's ability to provide services in the practice of public accounting, or in the industry of the permit holder or registrant's employer. This rule is effective through December 31, 2005.~~

10:15-29-3. CPE compliance period for new CPAs and PAs [REVOKED]

~~(a) When a new CPA or PA becomes certified or licensed, the new CPA or PA shall report a minimum of forty (40) hours of CPE, including two (2) hours of professional ethics,1) completed within the calendar year immediately preceding the filing of the application for the permit, or (2) completed within the three hundred sixty-five (365) day period immediately preceding the date of the application for permit for the initial permit to practice public accounting.~~

~~(b) A new CPA or PA shall provide evidence of successful completion of the AICPA ethics examination or its equivalent~~

~~as determined by the Board as part of their CPE requirement. The passing score is determined by the Board.~~

~~(c) For the first renewal after the initial permit to practice public accounting has been issued to a new CPA or PA, in order to renew the permit, the new CPA or PA shall be required to report Forty (40) hours of acceptable CPE, including two (2) hours of professional ethics.~~

~~(d) This rule is effective through December 31, 2005.~~

10:15-29-4. Required CPE for issuance of a permit [REVOKED]

~~(a) An individual who applies for a permit to practice public accounting shall comply with the CPE requirements prior to filing the application for a permit.~~

~~(b) An individual who applies to renew a permit, other than a new CPA, new PA, or reciprocal applicant shall document that the applicant has:~~

~~(1) completed a minimum of forty (40) hours of qualifying CPE, including two (2) hours of professional ethics, within the calendar year immediately preceding the filing of the application for the permit; or~~

~~(2) completed a minimum of forty (40) hours of qualified CPE, including two (2) hours of professional ethics, within the three hundred sixty-five (365) day period immediately preceding the date of the application for the permit.~~

~~(c) An individual who applies for an initial interim permit shall document that the individual has completed within the previous calendar year or within the 365 days immediately preceding the date of application, a minimum of forty (40) hours of acceptable CPE, including two (2) hours of professional ethics.~~

~~(d) An individual applying for an initial interim permit shall provide evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board as part of their CPE requirement.~~

~~(e) Unless exempted by 10:15-29-10, every permit holder shall complete at least two (2) hours of professional ethics CPE as a part of the qualifying CPE requirement.~~

~~(f) An individual other than a new CPA or PA who applies for a permit after the permit has been suspended or revoked, or has lapsed shall have completed forty (40) hours of qualifying CPE, including two (2) hours of professional ethics, within the three hundred sixty-five (365) day period immediately preceding the date of the application for a permit.~~

~~(g) Regardless of the time frame in which CPE credit is earned, once credit has been claimed to the Board toward the issuance of a permit to practice, such credit may not be claimed again, except in the following circumstances:~~

~~(1) An individual who applies for a permit as a new CPA or PA with a minimum of 40 hours of CPE, including two (2) hours of professional ethics, may use the same credit when applying for the first renewal of the initial permit as long as the permit has not lapsed and as long as the credit was completed within the previous calendar year or within the 365 days immediately preceding the date of application for permit renewal.~~

~~(2) An individual who applies for an initial permit with a minimum of 40 hours of CPE, including two (2) hours of professional ethics, in conjunction with an application for reciprocity may use the same credit when applying for the first renewal of the initial permit as long as the permit has not lapsed and as long as the credit was earned within the previous calendar year or within the 365 days immediately preceding the date of application for permit renewal; or~~

~~(3) An individual who applies for an initial interim permit with a minimum of 40 hours of CPE, including two (2) hours of professional ethics, may use the same credit when applying for the first renewal of the initial permit as long as the permit has not lapsed and as long as the credit was earned within the previous calendar year or within the 365 days immediately preceding the date of application for permit renewal.~~

~~(h) Qualified CPE credit hours from any one course may not be split in any manner between two consecutive compliance periods. Multiple CPE courses taken on the same day may be claimed between two consecutive compliance periods, but only if the sponsor of each separate CPE course issues a separate letter or certification attesting to the completion of each individual course.~~

~~(i) This rule is effective through December 31, 2005.~~

10:15-29-5. Reciprocity [REVOKED]

~~(a) An individual who applies for a certificate or license by reciprocity shall comply with the CPE requirements provided for in the Oklahoma Accountancy Act and the rules implementing that Act, except that an applicant who is not practicing public accounting shall not be required to report CPE in conjunction with the application for reciprocity.~~

~~(b) An individual who applies for an initial permit shall document that the applicant has completed within the previous calendar year or within the 365 days immediately preceding the date of application, a minimum of forty (40) hours of acceptable CPE, including two (2) hours of professional ethics.~~

~~(c) An individual applying for a certificate by reciprocity shall provide evidence of successful completion of the AICPA ethics examination or its equivalent as determined by the Board as part of their CPE requirement. The passing score is determined by the Board.~~

~~(d) This rule is effective through December 31, 2005.~~

10:15-29-6. Reporting and documentation by registrants [REVOKED]

~~(a) Each applicant seeking to obtain a permit shall certify, in writing, on a form prescribed by the Board, information regarding the CPE hours claimed for credit in the CPE compliance period.~~

~~(b) CPE hours claimed for credit may be claimed only for the compliance period in which the course was completed and credit granted.~~

~~(c) At the time of completing each course, the registrant shall obtain a letter or certificate attesting to completion of the course from the sponsor of the course. Such letters or certificates shall be retained for a period of five (5) years after the end of the compliance period in which the program is completed and shall include the specific information set forth in the Board's CPE Standards.~~

~~(d) Participants in structured CPE programs shall also retain descriptive material which reflects the content of a course in the event the participant is requested by the Board to substantiate the course content.~~

~~(e) This rule is effective through December 31, 2005.~~

10:15-29-7. Qualifying subjects [REVOKED]

~~(a) Acceptable CPE subjects include the fields of study which enhance a CPA's or PA's ability to serve and deliver professional services, as defined in Section 15.1A.31 of the Oklahoma Accountancy Act, to clients or employers including accounting, auditing, advisory services, specialized knowledge and applications, practice management, personal development, taxation, professional ethics, and subjects specifically related to the industry of the permit holder or applicant's employer. Other subjects may be acceptable to the Board if such subjects relate to the practice of public accounting or maintain or increase the technical and nontechnical professional skills of the applicant for a permit.~~

~~(b) If a CPA's or PA's main area of employment is industry, at least 24 hours of the qualifying CPE completed by the permit holder shall be in subject areas related to the practice of public accounting.~~

~~(c) The responsibility for demonstrating to the satisfaction of the Board that nontechnical courses maintain or increase the professional skills of the individual rests solely with the permit holder or the applicant for a permit. Failure to demonstrate to the satisfaction of the Board that a nontechnical CPE course will maintain or increase professional competence will result in the disallowance of credit for such course.~~

~~(d) This rule is effective through December 31, 2005.~~

10:15-29-8. Verification [REVOKED]

~~(a) The Board may periodically conduct verification of the CPE credit reported by registrants.~~

~~(b) Such verification shall be conducted by requesting the registrant to submit to the Board the documentation and evidence required to be retained by the registrant.~~

~~(c) The Board may revoke permits or deny applications for permits for deficiencies in the documentation submitted or for failure to submit the documentation and evidence required to be retained.~~

~~(d) If a CPE course is not accepted for credit, the permit holder will be notified and the Board may grant a period of time for the permit holder to correct the deficiency.~~

~~(e) In order to determine compliance with the CPE standards, the Board may inspect the records of CPE program sponsors and CPE program developers.~~

~~(f) Registrants shall automatically be included in the subsequent verification of CPE in any of the following instances:~~

~~(1) If the registrant failed to satisfactorily comply with CPE requirements as determined by the Board;~~

~~(2) If the registrant holding a permit has been the subject of an enforcement action by the Board during the preceding credit verification.~~

~~(g) This rule is effective through December 31, 2005.~~

10:15-29-9. Penalties for noncompliance with the CPE requirement [REVOKED]

~~(a) A false or misleading statement by an individual or firm permit holder or an applicant for a permit relating to information about CPE credits shall constitute a cause for disciplinary action pursuant to the provisions of the Oklahoma Accountancy Act.~~

~~(b) Failure of an individual permit holder who is engaged in the practice of public accounting serving Oklahoma clients to file an acceptable application for renewal of a permit by July 1, shall be subject to disciplinary action pursuant to the provisions of the Oklahoma Accountancy Act.~~

~~(c) This rule is effective through December 31, 2005.~~

10:15-29-10. Exceptions [REVOKED]

~~(a) The Board may grant partial or complete exemptions from or modifications of CPE requirements for:~~

~~(1) retirement;~~

~~(2) Military Service;~~

~~(3) Disability~~

~~(4) Inactive; or~~

~~(5) Other good cause as determined by the Board on an individual basis.~~

~~(b) Registrants who are not engaged in the practice of public accounting and who elect not to hold a permit are exempt from the CPE requirement.~~

~~(c) This rule is effective through December 31, 2005.~~

SUBCHAPTER 30. CONTINUING PROFESSIONAL EDUCATION

10:15-30-1. Burden of proof

~~Beginning January 1, 2006, the~~ The burden of proof rests solely upon certificate and license holders to demonstrate to the satisfaction of the Board, in accordance with the Oklahoma Accountancy Act, that all continuing education courses reported meet all the requirements as to content and subject matter related to the profession as provided in subchapter 32 of this Code.

10:15-30-2. Required CPE for issuance of an original permit

~~Beginning January 1, 2006, all certificate~~ Certificate and license holders applying for their first permit to practice public accounting must report a minimum of forty (40) hours of CPE, including two (2) hours of professional ethics, earned within the previous calendar year or within 365 days immediately preceding the date of the application before a permit will be issued. A certificate or license holder shall also provide evidence of the successful completion of the AICPA Ethics Examination or its equivalent as determined by the Board. The passing score is determined by the Board.

10:15-30-3. Required CPE for issuance of a lapsed permit

~~Beginning January 1, 2006, all certificate~~ Certificate and license holders previously holding a permit to practice public accounting must report a minimum of forty (40) hours of CPE, including two (2) hours of professional ethics, earned within the previous calendar year or within 365 days immediately preceding the date of the application before a permit will be issued. A certificate or license holder shall also provide evidence of the successful completion of the AICPA Ethics Examination or its equivalent as determined by the Board. The passing score is determined by the Board.

10:15-30-4. Required CPE for renewal of a permit

~~Beginning January 1, 2006, all certificate~~ Certificate and license holders renewing their current permit to practice public accounting must comply with the provisions of 10:15-30-5. ~~when renewing their permit to practice public accounting.~~

10:15-30-5. Reporting and documentation by certificate and license holders

(a) ~~Beginning January 1, 2006, all certificate~~ Certificate and license holders not otherwise exempt must complete one hundred twenty (120) hours of qualifying CPE within three (3) calendar years. A certificate or license holder's three (3) year period begins January 1 in the year the certificate or license holder was required to ~~report~~ earn CPE. A minimum of twenty (20) hours of acceptable CPE, including two (2) hours of professional ethics, shall be completed each calendar year.

(b) Each certificate and license holder required to report CPE shall certify, in a format prescribed by the Board, information regarding the CPE hours claimed for credit for the calendar year.

(c) CPE hours claimed for credit may be claimed only for the compliance period in which the course was completed and credit granted.

(d) Each letter or certificate of completion shall include the date of completion of the seminar or course as evidenced by:

(1) Date the in-attendance course was completed;

(2) Date a self-study course was completed and evidenced by the date of certified mailing or date of facsimile transmission to the program sponsor;

(3) Date an internet self-study course is transmitted to the program sponsor.

(~~d~~e) At the time of completing each course, or within sixty (60) days thereafter, the certificate or license holder shall obtain a letter or certificate attesting to completion of the course from the sponsor of the course. Such letters or certificates shall be retained for a period of five (5) years after the end of the compliance period in which the program is completed and shall include the specific information set forth in the Board's CPE Standards.

(~~e~~f) Participants in structured CPE programs shall also retain descriptive material for five (5) years which reflects the content of a course in the event the participant is requested by the Board to substantiate the course content.

(~~f~~g) If a certificate or license holder's main area of employment is industry and the certificate or license holder holds a permit to practice, at least seventy-two (72) hours of the one hundred twenty (120) hour requirement within a three (3) year period of the qualifying CPE completed by the certificate or license holder shall be in subjects related to the practice of public accounting and shall earn a minimum of eight (8) hours in the areas of taxation, accounting or assurance per year.

10:15-30-6. Verification of CPE credit

(a) ~~Beginning January 1, 2006, the~~ The Board may periodically conduct verification of the CPE credit reported by certificate and license holders.

(b) Such verification shall be conducted by requesting the certificate or license holder to submit to the Board the documentation and evidence required to be retained by the certificate or license holder.

(c) If a CPE course is not accepted for credit, the certificate or license holder will be notified and the Board may grant a period of time for the certificate or license holder to correct the deficiency.

(d) In order to determine compliance with the CPE standards, the Board may inspect the records of CPE program sponsors and CPE program developers.

(e) Certificate and license holders shall automatically be included in the subsequent verification of CPE in any of the following instances:

(1) If the certificate or license holder failed to satisfactorily comply with CPE requirements as determined by the Board;

(2) if a certificate or license holder has been the subject of an enforcement action by the Board during the preceding credit verification.

10:15-30-7. Penalties to certificate and license holders for noncompliance with the CPE requirement

~~Beginning January 1, 2006, failure~~ Failure by a certificate or license holder to document CPE credits shall constitute a cause for disciplinary action pursuant to the provisions of the Oklahoma Accountancy Act.

10:15-30-8. Exceptions to CPE reporting requirements

(a) ~~Beginning January 1, 2006, the~~ The Board exempts from the requirements of CPE the following classifications:

(1) Retired certificate or license holders who are no longer employed or practicing public accounting;

(2) Certificate or license holders who are on active military service;

(3) Disabled certificate or license holders who are no longer employed or practicing public accounting due to medical circumstances;

(4) ~~Inactive certificate~~ Certificate or license holders who are (A) not employed due to circumstances other than retirement, military service or disability or (B) certificate

or license holders employed but not performing the following services:

(A) keeping books, preparing trial balances, financial statements or reports

(B) preparing tax returns, consulting on tax matters, conducting studies on tax matters, preparing reports on tax matters

(C) preparing personal financial or investment plans

(D) providing management advisory services

(5) Other good cause as determined by the Board on an individual basis.

(b) Unless otherwise exempted for good cause, all ~~All~~ certificate and license holders ~~holding a permit~~ must comply with CPE reporting requirements.

(c) A certificate or license holder exempt from the requirement of CPE by reason of retirement or inactive status must indicate "retired" or "inactive" if they use their "CPA" or "PA" designation.

10:15-30-9. Re-Entering Active Status

An inactive status registrant upon return to active status must comply with CPE requirements as follows:

(1) For each month the registrant was on inactive status, three and one-third (3 1/3) hours of qualified CPE, rounded up to the nearest half credit.

(2) The maximum number of qualified CPE hours required by this rule shall be one hundred twenty (120) hours.

(3) The registrant can claim any CPE hours earned while on inactive status during the preceding three (3) year period.

(4) A registrant who immediately gives written notice to the Board upon changing to active status may be granted the following time periods from the date of the change of status in which to complete the CPE required by this section.

(A) From the date of the change of status, for registrants needing forty (40) hours or less to comply with (1) or (2) above, sixty (60) days; and

(B) From the date of the change of status, a registrant shall complete additional CPE over the forty (40) hours described in (a) above within one hundred eighty (180) days.

(5) A registrant must document, on a form prescribed by the Board, all qualified CPE required by this rule.

(6) At its discretion, the Board may modify the requirements of this rule for good cause on a case by case basis.

SUBCHAPTER 32. STANDARDS FOR CONTINUING PROFESSIONAL EDUCATION (CPE) PROGRAMS

10:15-32-5. Standards for CPE program measurement

(a) Sponsored learning activities are measured by program length, with one 50-minute period equal to one CPE credit. One-half CPE credit increments (equal to 25 minutes) are permitted after the first credit has been earned in a given learning activity.

(1) For learning activities in which individual segments are less than 50 minutes, the sum of the segments should be considered one total program. For example, five 30-minute presentations would equal 150 minutes and should be counted as three CPE credits. When the total minutes of a sponsored learning activity are greater than 50, but not equally divisible by 50, the CPE credits granted should be rounded down to the nearest one-half credit. Thus, learning activities with segments totaling 140 minutes should be granted two and one-half CPE credits.

(2) While it is the participant's responsibility to report the appropriate number of credits earned, CPE program sponsors must monitor group learning activities to assign the correct number of CPE credits.

(3) For university or college credit courses that meet these CPE Standards, each unit of college credit shall equal the following CPE credits:

(A) Semester System 15 credits; and

(B) Quarter System 10 credits;

(4) For university or college non-credit courses that meet these CPE standards, CPE credits shall be awarded only for the actual classroom time spent in the non-credit course.

(5) Credit is not granted to participants for preparation time.

(6) Only the portions of committee or staff meetings that are designed as programs of learning and comply with these standards qualify for CPE credit.

(c) CPE credit for self-study learning activities must be based on a pilot test of the average completion time. A sample of intended professional participants should be selected to test program materials in an environment and manner similar to that in which the program is to be presented. The sample group of at least three individuals must be independent of the program development group and possess the appropriate level of knowledge before taking the program. The sample does not have to ensure statistical validity. CPE credits should be recommended based on the average completion time for the sample. If substantive changes are subsequently made to program materials further pilot tests of the revised program materials should be conducted to affirm or amend, as appropriate, the average completion time.

(d) Instructors or discussion leaders of learning activities should receive CPE credit for both their preparation and presentation time to the extent the activities maintain or improve their professional competence and meet the requirements of these CPE standards.

(1) Instructors, discussion leaders, or speakers who present a learning activity for the first time should receive CPE credit for actual preparation time up to two times the

number of CPE credits to which participants would be entitled, in addition to the time for presentation.

(2) Instructors of university or college courses can claim a maximum of fifteen (15) CPE credits per college credit hour taught to the extent the preparation required for the course maintains or improves their professional competence.

(3) For repeat presentations, CPE credit as provided in 10:15-32-5(d)(1) and (2) can be claimed only if it can be demonstrated that the learning activity content was substantially changed and such change required significant additional study or research.

(e) Writers of published articles, books, or CPE programs should receive CPE credit for their research and writing time to the extent it maintains or improves their professional competence. CPE credit from this activity shall be limited to twenty-five percent (25%) of the CPE credit required in a compliance period and will be determined by the Board on a case by case basis. Writing articles, books, or CPE programs for publication is a structured activity that involves a process of learning. CPE credits should be claimed only upon publication.

(f) CPE credits recommended by a CPE program sponsor of independent study must not exceed the time the participant devoted to complete the learning activities specified in the learning contract. The credits to be recommended by an independent study CPE program sponsor should be agreed upon in advance and should be equated to the effort expended to improve professional competence. The credits cannot exceed the time devoted to the learning activities and may be less than the actual time involved.

SUBCHAPTER 33. PEER REVIEW

10:15-33-1. Establishment of peer review program

~~The following rules are effective July 1, 2005 and thereafter.~~

(~~1~~a) Pursuant to the Oklahoma Accountancy Act, §15.30, the Board establishes a peer review program to monitor firms' compliance with applicable accounting and auditing standards adopted by generally recognized standard-setting bodies. The program shall emphasize education, including appropriate remedial procedures, which may be recommended or required when financial statement reports do not comply with professional standards. In the event a firm does not comply with established professional standards, or a firm's professional work is so inadequate as to warrant disciplinary action, the Board shall take appropriate action to protect the public interest.

(~~2~~b) This subchapter shall not require any firm to become a member of any sponsoring organization.

10:15-33-2. Special definitions

~~Effective July 1, 2005, the~~ The following words and terms used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.

(1) 'Adverse report" means there are significant deficiencies in the design of the firm's system of quality control, pervasive instances of noncompliance with the system as a whole, or both, resulting in several material failures to adhere to professional standards on engagements.

(2) "Modified report" means the design of the firm's system of quality control created a condition in which the firm did not have reasonable assurance of complying with professional standards or that the firm's degree of compliance with its quality control policies and procedures did not provide it with reasonable assurance of complying with professional standards. A report modified due to scope limitations specifically related to compilations would not be considered modified for the purposes pursuant to these rules.

(3) "Peer review due date" must be a date within six (6) months after the peer review year end, plus any extensions granted by the sponsoring organization or the Board.

(4) "Peer review year end" means the year end as determined by the firm and its reviewer.

(5) "Performance of services" is deemed to start when an engagement letter is signed or agreement reached.

(6) "Review program" means the peer review conducted under the peer review program.

(7) "Review year" means the peer review covers a one-year (twelve-month) period. Engagements selected for peer review normally would have periods ending during the year under peer review.

(8) "Sponsoring organization" means an individual or entity that meets the standards specified by the Board for administering the peer review. The Board shall periodically publish a list of sponsoring organizations, which have been approved by the Board.

(9) "Unmodified report" means the reviewed firm system of quality control has been designed to meet the requirements of the quality control standards for an accounting and auditing practice and the system was being complied with during the peer review year to provide the firm with reasonable assurance of complying with professional standards.

10:15-33-3. Standards for peer reviews and sponsoring organizations

~~The following rules are effective July 1, 2005 and thereafter.~~

(~~1~~a) The Board adopts "Standards for Performing and Reporting on Peer Reviews" promulgated by the American Institute of Certified Public Accountants, as its minimum standards for peer review of registrants~~, or other standards as approved by the Board~~. The Board may approve standards promulgated by other qualifying sponsoring organizations.

(~~2~~b) Qualified sponsoring organizations shall be any organization approved by the Board.

10:15-33-3. 1 Standards for peer reviewers

(a) Any firm who performs peer reviews for registrants within the State of Oklahoma must be registered and hold a valid permit to practice public accounting issued by the Board.

(b) Any individual who performs peer reviews for registrants within the State of Oklahoma must be registered and hold a valid permit to practice public accounting issued by the Board or make application for practice privileges as provided in Subchapter 10:15-22.

10:15-33-5. Effect of successive modified/adverse reports

~~The following rules are effective July 1, 2005 and thereafter.~~

(~~1~~a) A firm, including a succeeding firm, which receives two (2) consecutive modified and/or one (1) adverse report(s), may be required by the Board or its designee to have an accelerated peer review within eighteen (18) months of the firm's last peer review.

(~~2~~b) If the accelerated review required by subsection ~~(1)~~ (a) above results in a modified or adverse report:

(~~A~~1) The firm may complete any review and audit engagement for which field work has already begun only if:

(~~i.~~A) Prior to issuance of any report, the engagement is reviewed and approved by a third party reviewer acceptable to the Board or its designee; and

(~~ii.~~B) The engagement is completed within ninety (90) days of the acceptance of the peer review report, letter of comments, and letter of response by the sponsoring organization;

(~~B~~2) The firm shall be referred to the Vice Chair of the Board for enforcement investigation.

(~~C~~3) A firm may petition the Board for a waiver from the provisions of this rule subsection ~~(2).~~(b).

10:15-33-6. Reporting to the board

(a) ~~A firm shall submit to the Board effective with its 2005 firm registration:~~ Any report or document required to be submitted under this subsection shall be filed with the Board within thirty (30) days of receipt from the sponsoring organization. Such report shall contain:

(1) A copy of the report and the final letter of acceptance from the sponsoring organization, if such report is unmodified with or without comments; or

(2) A copy of the report, letter of comments, letter of response, the signed agreement to the conditional letter of acceptance, and final letter of acceptance when corrective actions are complete if the report is modified in any respect or adverse; and

(3) A copy of the Public Committee Accounting Oversight Board (PCAOB) report, if applicable.

~~(b) Any report or document required to be submitted under subsection (a) shall be filed with the Board within thirty (30) days of receipt from the sponsoring organization.~~

(~~c~~b) Any document submitted to the Board under this subsection is confidential pursuant to the Act.

10:15-33-7. Peer review committee

~~The following rules are effective July 1, 2005 and thereafter.~~

(~~1~~a) The Board shall appoint a Peer Review Committee for the purpose of:

(~~A~~1) Monitoring sponsoring organizations to provide reasonable assurance that peer reviews are being conducted and reported on in accordance with peer review minimum standards;

(~~B~~2) Reviewing the policies and procedures of sponsoring organization applicants as to their conformity with the peer review minimum standards; and

(~~C~~3) Reporting to the Board on the conclusions and recommendations reached as a result of performing functions in paragraphs (A) and (B) of this subsection.

(~~2~~b) The Peer Review Committee shall consist of three (3) members nominated by the Chair and approved by the Board, none of whom is a current member of the Board. Initial appointment of the three (3) committee members shall be as follows: one (1) member appointed for three (3) years; one (1) member appointed for two (2) years; and one member appointed for one (1) year. Subsequent committee members shall serve three (3) year terms. A committee member shall not be allowed to be reappointed until a three (3) year period has lapsed after his/her previous appointment. Compensation, if any, of Peer Review Committee members shall be set by the Board, not to exceed ~~One Hundred Twenty Five Dollars ($125.00)~~ One Hundred Fifty Dollars ($150.00) per hour. Each member of the Peer Review Committee must be active in the practice of public accounting at a supervisory level or above in the accounting or auditing function while serving on the committee or any employee involved at a supervisory level or above in an audit function of a state or local government. The member or member's firm must be enrolled in an approved practice/monitoring program and have received an unmodified report on its most recently completed peer review. A majority of the committee members must satisfy the qualifications required of system peer review team captains as established and reported in the AICPA Standards for Performing and Reporting on Peer Reviews.

(~~A~~1) No more than one Peer Review Committee member may be from the same firm.

(~~B~~2) A Peer Review Committee member may not concurrently serve as:

(~~i~~A) A member of the AICPA's or any state's CPA society's ethics committee; or

(~~ii~~B) A member of the AICPA's or any state's CPA society's Peer Review Committee for a period of ~~eighteen (18) months~~ twelve (12) months following that person's service on such Peer Review Committee.

(~~C~~3) A Peer Review Committee member may not participate in any discussion or have any vote with respect to a reviewed firm when the committee member lacks independence or has a conflict of interest. The Board may appoint alternate committee member(s) to serve in these situations.

(~~3~~c) Information concerning a specific firm or reviewer obtained by the Peer Review Committee during oversight

activities shall be confidential, and the firm's or reviewer's identity shall not be reported to the Board. Reports submitted to the Board will not contain information concerning specific registrants, firms or reviewers.

(~~4~~d) As determined by the Board, the Peer Review Committee shall make periodic recommendations to the Board, but not less than annually, as to the continuing qualifications of each sponsoring organization as an approved sponsoring organization.

(~~5~~e) The Peer Review Committee may:

(~~A~~1) When necessary in reviewing reports on peer reviews, prescribe actions designed to assure correction of the deficiencies in the reviewed firm's system of quality control policies and procedures and provide such results to the Board;

(~~B~~2) Monitor the prescribed remedial and corrective actions to determine compliance by the reviewed firm;

(~~C~~3) Establish and perform procedures for ensuring that reviews are performed and reported on in accordance with the AICPA Standards for Performing and Reporting on Peer Reviews or other standards as approved by the Board and the rules promulgated herein by the Board;

(~~D~~4) Establish a report acceptance process, which facilitates the exchange of viewpoints among committee members and sponsoring organization; and

(~~E~~5) Communicate to the governing body of the sponsoring organization on a recurring basis:

(~~i~~A) Problems experienced by the enrolled registrants in their systems of quality control as noted in the peer reviews conducted by the sponsoring organization;

(~~ii~~B) Problems experienced in the implementation of the peer review program; and

(~~iii~~C) A summary of the historical results of the peer review program.

(~~6~~f) Committee members shall become disqualified to serve on Peer Review Committee if any of the provisions that qualify the committee member no longer exist or by majority vote of the Board.

SUBCHAPTER 39. RULES OF PROFESSIONAL CONDUCT

10:15-39-1. Application

(a) To the extent not contradicted by rule herein, a registrant shall conform in fact and in appearance to the AICPA Code of Professional Conduct.

(b) To protect the public interest, the Rules of Professional Conduct are based on the premise that the public and the business community rely on sound financial reporting and on professional competence. This premise is inherent in the authorized use of the titles certified public accountant and public accountant, which imposes on persons registered with the Board certain obligations to the public and to others. These obligations which the Rules of Professional Conduct are intended to enforce, include: the obligation to maintain independence and objectivity of thought and action, to strive continuously to improve professional skills, to observe, where applicable, generally accepted accounting principles, governmental auditing standards, standards as set by the Public Company Auditing Oversight Board, and generally accepted auditing standards, to promote sound and informative financial reporting, to hold the affairs of clients or employers in confidence, to uphold the standards of the public accounting profession, and to maintain high standards of personal conduct in all matters affecting fitness to practice public accounting.

(c) Acceptance by a registrant of a certificate~~,~~ or license~~, or permit to engage in the practice of public accounting, or to use the titles of certified public accountant, CPA, public accountant, or PA which imply a particular competence,~~ involves ~~acceptance by the registrant of such obligations and, accordingly, of~~ a duty to abide by the Rules of Professional Conduct.

(d) The Rules of Professional Conduct are intended to have application to all kinds of professional services performed in the practice of ~~public~~ accounting, including, but not limited to, assurance, attest, auditing, accounting, review and compilation services, tax services, management advisory services and personal financial and investment planning, and intended to apply as well to all certificate~~,~~ and license, ~~or permit holders,~~ whether or not engaged in the practice of public accounting, except where the wording of one of the Rules of Professional Conduct clearly indicates that the applicability is more limited.

(e) A registrant who is engaged in the practice of public accounting outside the United States is not subject to discipline by the Board for departing, with respect to such foreign practice, from any of the Rules of Professional Conduct, so long as the conduct is in accordance with the Rules of Professional Conduct applicable to the practice of public accounting in the country in which the registrant is practicing. If the name of a registrant is associated with financial statements in such manner as to imply that the registrant is acting as an independent CPA or PA under circumstances which would entitle the reader to assume that United States practices are followed, the registrant will be expected to comply with the provisions of Code 10:15-39-6(b), 10:15-39-6(c) and 10:15-39-6(d).

(f) In interpreting and enforcing these rules, the Board may give consideration, but not necessarily dispositive weight, to relevant interpretations, rulings and opinions issued by the boards of other jurisdictions, appropriately authorized ethics committees of professional organizations and other federal and state agencies.

SUBCHAPTER 43. AUDITS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

10:15-43-1. Registration

Pursuant to Title 74 Oklahoma Statutes Section 212A(B), all registrants, prior to entering into contracts to perform an audit of a governmental entity, must register, on a form prescribed by the Board which attests to the registrant's compliance with Government Auditing Standards.

10:15-43-2. Evaluation of registrations

Evaluation of qualifications and approval of registrations shall be performed by the Board or its designee.

10:15-43-3. Notification

Each registrant will be notified of the approval or denial of such registration.

10:15-43-4. Denial of registration

(a) Any registrant whose registration has been denied shall be notified in writing. The written notice shall include the reason(s) for the denial.

(b) If a registration is denied, the registrant may file a written request with the Board for a review of the denial. The registrant shall have the burden of demonstrating to the Board that the qualifications to perform audits in accordance with Government Auditing Standards have been met. Any evidence submitted by the registrant shall be in documentary form.

10:15-43-5. Board review of denied registrations

(a) The Board shall consider all requests for review of denied registrations.

(b) The issues considered for review shall include, but not be limited to, the eligibility requirements and standards upon which the denial of the registration was based.

(c) The registrant who has requested the review shall be notified in writing of the Board's decision. If the denial is sustained by the Board, the written notice shall include the reason(s) for sustaining the denial.

(d) If the denial of the registration is sustained, and the registrant is not satisfied with the decision of the Board, the registrant may request in writing a public hearing before the Board. Such request shall be granted only if the registrant can provide additional information to the Board which was not previously available to the Board at the time of the initial evaluation or review. Any additional evidence shall be in documentary form. If any additional evidence is to be presented by oral testimony, a written synopsis of that oral evidence shall accompany the request for a public hearing.

(e) If the Board grants a public hearing to the registrant, the hearing may be held in conjunction with the next regular meeting of the Board or at a special meeting of the Board.

10:15-43-6. Renewal requirements

All registrants who have registered under the provisions of this subchapter shall renew their registration, on a form prescribed by the Board, on or before December 31 of each year.

[OAR Docket #06-1155; filed 5-26-06]

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

[OAR Docket #06-1082]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
35:1-1-1. [AMENDED]
35:1-1-3. [AMENDED]
Subchapter 3. Organization and Operation
35:1-3-1. through 35:1-3-4. [AMENDED]
Subchapter 5. Declaratory Ruling Procedures
35:1-5-1. through 35:1-5-3. [AMENDED]
35:1-5-4. [REVOKED]
35:1-5-5. [AMENDED]
35:1-5-6. [REVOKED]
Subchapter 7. Rulemaking Procedures
35:1-7-1. [AMENDED]
35:1-7-2. through 35:1-7-5. [REVOKED]
Subchapter 9. Individual Procedures
35:1-9-1. [AMENDED]
35:1-9-3. through 35:1-9-4. [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4, 2A-1 et seq., 10-9 et seq., and 10-9.16; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
February 15, 2006 through March 17, 2006
Public hearing:
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March 23, 2006
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April 21, 2006
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2006
Final adoption:
May 18, 2006
Effective:
June 25, 2006
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The purpose of the proposed rules is to amend the Department's organizational procedures related to divisions, hearings, rulemaking, licensing, and declaratory rulings. The hearing procedures are amended to allow for consistency with the Administrative Procedures Act and the Agricultural Pollutant Discharge Elimination System Act requirements. The revisions also provide for clean up to old and obsolete rules.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.

SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

35:1-1-1. Purpose

The rules of this Chapter have been adopted for the purpose of providing the public with information concerning the structure and operation of the Oklahoma Department of Agriculture, Food, and Forestry as well as setting ~~our~~ procedures regarding declaratory rulings, rules governing rulemaking and individual proceedings for both formal and informal hearings, and licensing procedures.

35:1-1-3. Conflicting rules

(a) All rules ~~and regulations~~ heretofore adopted by the State Board of Agriculture which are in conflict with the rules in Chapter 1 of this Title are hereby repealed or suspended, but otherwise ~~to~~ remain valid and in full effect.

(b) All rules ~~and regulations~~ heretofore adopted by the Board ~~of Agriculture~~ which are in conflict with Title 75 ~~O.S., 1981~~ of the Oklahoma Statutes, Sections 301~~,~~ et seq., as amended, are hereby repealed or suspended, but otherwise ~~to~~ remain valid and in full effect.

SUBCHAPTER 3. ORGANIZATION AND OPERATION

35:1-3-1. Composition

The ~~State~~Oklahoma Department of Agriculture, Food, and Forestry consists of the State Board of Agriculture~~ and each of~~, the divisions, and other positions and ~~officers, organized as hereafter described in 35:1-3-4,~~offices and as may be established by law or by the Board.~~ The divisions presently established are Administration, Agricultural Laboratory, Animal Industry, Agricultural Products, Forestry, Market Development, and Plant Industry, plus cooperative divisions with the federal government on Agricultural Statistics and Animal Damage Control.~~

35:1-3-2. Personnel of the Board

(a) The State Board of Agriculture consists of five (5) members~~, all of whom are~~ appointed by the Governor with the advice and consent of the Senate. Four (4) members are appointed from within and represent an agricultural district and one member is appointed from the state at large. The at large member is the President of the Board~~,~~ and Commissioner of Agriculture~~, is elected by the membership of the Board~~ and serves as the executive officer.~~ The Secretary of the Board is a selected employee, who is not a member of the Board, but who performs those duties fixed by the Board. The Secretary shall be designated as the Executive Secretary of the Board.~~

(b) The Secretary of the Board is an employee of the Department, who is not a member of the Board, who performs those duties fixed by the Board. The Secretary shall be designated as the Executive Secretary of the Board.

35:1-3-3. Board meetings; quorum

The State Board of Agriculture meets once each month in regular session. Special meetings may be called by the President of the Board or ~~whenever petitioned for~~upon petition by three (3) members~~ thereof~~. Three (3) members of the Board shall constitute a quorum.

35:1-3-4. Functions, duties, and operations of the divisions

(a) For the effective operation of its integrated activities and duties, the Oklahoma Department of Agriculture~~ has been divided into eight (8) divisions of work under~~, Food, and Forestry shall have the ~~following classifications and their respective functions. Each division operates under the general rules of the Legislature and the Board and also under the rules particularly relating~~ power to ~~its own function. The Board of Agriculture is the governing body which prescribes and delegates the duties and functions to be exercised and performed by the respective~~ consolidate any of the divisions, ~~except where the duties and functions are prescribed by law. The activities~~ transfer any of the ~~following described divisions include, but shall not be limited to, the duties and~~ functions ~~listed under each of the respective divisions~~ or duties to another division, place additional functions or activities in a division, establish new divisions, and create new or additional positions in the Department, when conducive to a more efficient administration and enforcement of laws pertaining to agriculture.

(b) The divisions of the Department presently established include the following:

(1) ~~Administration Division. The Administration Division is basically a service division for the Department of Agriculture. The duties and responsibilities of this division are broken down into these sections~~Administrative Services: Executive office and agency services, including finance, personnel, audits and investigations, and general services.

~~(A) Finance Section. The Finance Section handles all monies or revenue that comes into the Department of Agriculture; maintains and prepares the Department budget request; and maintains control over the operational budget for the agency. Handles all disbursement, claims, transfers of funds and monies incurred by the various divisions or employees of the Department.~~

~~(B) Personnel Section. The Personnel Section maintains all official personnel records for the Department of Agriculture; maintains official departmental time and leave records; processes all personnel transactions for the Department; processes payroll; and is the departmental agent for employee insurance and retirement. Coordinates all departmental activity with the State Merit System office.~~

~~(C) General Office Section. The General Office Section is responsible for purchase of departmental supplies and equipment and maintaining a proper inventory for the Department. Other services provided by this section are mail service, printing, and informational or public relations service for the Department. This section prints and addresses all licenses, tags, and other material processed and mailed out by this Department.~~

(2) Agricultural ~~Products Division. The Agricultural Products Division is divided into two working sections, each with a section supervisor and a chief inspector.~~Environmental Management Services: Protection of waters of the state and the environment from animal and poultry waste pollution.

~~(A) Commodity Grading Section. The Commodity Grading Section is responsible for the inspection and grading of fruits, vegetables, and other agricultural commodities, as required. Commodities are graded according to standards established by the United States Department of Agriculture.~~

~~(B) Regulatory and Marketing Service Section. The Regulatory and Marketing Service Section carries out the following responsibilities:~~

~~(i) This section works at the retail level in checking scales to determine their accuracy, reweighs prepackaged commodities to determine if the correct weights are properly displayed on the label, inspects labels to determine if they meet the criteria established in the model packaging regulation, examines fruits and vegetables and poultry products for proper labelling.~~

~~(ii) This section also grades eggs to determine if proper grade and size are displayed on package.~~

~~(iii) This section also tests livestock scales and other large truck scales for accuracy. Stop sale orders may be issued by this section in regard to violation of any of the above services.~~

~~(iv) The regulatory section examines all state licensed grain storage warehouses to determine the storage liability of both bonded warehouse receipts and open storage.~~

~~(v) This section also checkweighs and samples commodities under the USDA commodity sampling program.~~

~~(vi) The regulatory section also operates the State Bureau of Standards which maintains traceability to the National Bureau of Standards.~~

(3) Agricultural Statistics Services: Current crop conditions and livestock inventory numbers.

(~~3~~4) Animal Industry ~~Division. The Animal Industry Division is the official livestock and poultry disease control and eradication agency of the State and administers those portions of the Oklahoma Agricultural Code pertaining to livestock and poultry disease and meat inspection and grading. This division issues those licenses, permits and certificates prescribed by law; said licenses, permits, etc., are listed under 35:1-11-7~~Services: Animal health and disease control programs.

~~(A) The control and eradication of livestock diseases is accomplished by inspection, testing, and quarantining. The sale and use of vaccines, biologicals, and antigens are restricted and regulated by this division. Inspection is used for the movement of livestock and investigation of diseases; testing is used for the diagnosis and eradication of diseases; and quarantines are used to prevent the movement of diseased or exposed animals. Quarantines are maintained to facilitate the feeding of cattle in feed lots and, also, the use of cooked garbage for swine.~~

~~(B) Meat inspection is provided upon request to meat processing establishments. Inspection services provide for both antemortem and postmortem inspection to determine if any animals slaughtered are diseased. Strict sanitation measures are enforced to insure that the meat or meat products do not become contaminated during the process of handling in preparation for human consumption.~~

~~(C) The Poultry Section of the Animal Industry Division operates primarily as a service agency in performing the duties set forth in cooperative agreements with the federal government regarding the inspection of poultry flocks and hatchery operations and the testing for diseases designated in the National Poultry Improvement Plan and/or the National Turkey Improvement Plan.~~

~~(D) This division is responsible for enforcing the licensing and bonding requirements relating to the sale of livestock through various markets within the State of Oklahoma.~~

(5) Consumer Protection Services: Seed, feed, fertilizer, pesticides, nursery, apiaries, and weights and measures.

(6) Food Safety Services: Meat, milk, egg, poultry, and organic programs.

(~~3~~7) Forestry ~~Division. The functions of the Forestry Division are as follows~~Services: Landowner assistance, tree planting, fire protection, urban forestry, and education programs.

~~(A) The protection of lands from wildfire. Obstruction towers, aircraft, firefighting equipment, and agreements with rural fire departments are utilized in the detection, control and suppression of wildfires.~~

~~(B) Forest tree and shrub nursery is operated for the production of forest tree seedlings which are made available to authorized individuals for a nominal charge for use in afforestation, reforestation, wildlife habitat improvement, erosion, control, fuelwood, Christmas trees, farmstead windbreak, shelterbelts, posts and other utility purposes.~~

~~(C) Forestry information and educational materials are collected, published and distributed to the public.~~

~~(D) Forest water quality is maintained or improved through the administration of silvicultural best management practices in cooperation with forest land users.~~

~~(E) Technical forest management, utilization and marketing assistance is provided to landowners, forest raw material buyers and manufacturers of forest products.~~

(~~4~~8) ~~Agriculture~~ Laboratory~~. The Agriculture Laboratory was officially established by Oklahoma Statutes, Title 2, Section 2-19 for the following purposes~~Services: Official state testing lab.

~~(A) The people of Oklahoma are served through a program of analytical chemistry, microbiological and serological examinations of agricultural commodities and diseases affecting animal health and plant diseases.~~

~~(B) Extensive analyses are made on commercial livestock feeds, fertilizers and pesticide formulations to determine that these products are correctly labelled. Pesticide residue analyses are conducted on forage crops, grains, feeds, water, fish and soil, to see if any harmful residues are present. Meat and meat products are checked to see that they are in compliance with state laws. Looking for restricted ingredients and adulteration in all areas are also an important part of the laboratory's responsibilities.~~

~~(C) Brucellosis testing is conducted in the laboratory. Samples are received from state, federal and private veterinarians and inspectors at slaughter houses and sale barns. The brucellosis ring test is used on milk samples from the dairy herds to determine the presence of brucellosis.~~

~~(D) Swine samples are tested for pseudorabies submitted by private veterinarians and sale barn inspectors.~~

~~(E) Equine infectious anemia tests on horses are made at the laboratory. Another part of the animal health program is the checking of parasites, such as scabies and screwworms.~~

~~(F) The seed laboratory conducts purity and germination analyses on all crop, grass and vegetable seeds.~~

~~(G) The Oklahoma Bureau of Standards has the responsibility for maintaining and calibrating all standards of mass, length and volume.~~

~~(H) Laboratory services are available to individuals, firms, corporations or other state agencies on a fee basis. The fees shall be calculated to help defray the operating cost of the laboratory.~~

(~~5~~9) Market Development~~ Division. The Market Development Division is responsible for the dissemination of daily market news regarding agricultural commodities. It assists with the development of both domestic and foreign markets, services are provided to aid in improving market methods and the development of greater and more efficient utilization of agricultural products~~Services: Market promotion, loan programs, market news, and educational programs.

(10) Office of General Counsel: Legal assistance to the divisions and enforcement of the Oklahoma Agricultural Code.

~~(6) Plant Industry Division.~~

~~(A) The Plant Industry Division is primarily a regulatory division; maintaining a staff of inspectors throughout the State who sample, inspect, and investigate under the many laws administered by the division. A laboratory is maintained for the analyses of official samples incident to labelling, quality control and enforcement.~~

~~(B) Listed below are all of the laws administered by this division:~~

~~(i) Apiary Law~~
~~(ii) Feed Yards Act~~
~~(iii) Insect Pest & Plant Disease Law~~
~~(iv) Ornamental Pruning Law~~
~~(v) Pesticide Applicator Law~~
~~(vi) Pesticide Registration Law~~
~~(vii) Quarantine Law~~
~~(viii) Vegetable Law~~
~~(ix) Seed Law~~
~~(x) Feed Law~~
~~(xi) Fertilizer Law~~
~~(xii) Agricultural Liming Materials Act~~
~~(xiii) Weed Infested Material Law~~
~~(xiv) Oklahoma Soil Amendment Act of 1975~~
~~(xv) Organic Food Act~~
~~(xvi) Agriculture Biotechnology Act~~

~~(C) This division issues those licenses and certificates prescribed by law and issues stop sale orders, stop work orders, violation reports and other enforcement measures on any plant materials or products which do not meet the requirements of law or the rules and regulations promulgated thereunder.~~

(11) Public Information Services: Publicity and event planning.

~~(7) Statistical Reporting Service. The Statistical Reporting Service, through voluntary reporters, gathers and disseminates information concerning crop and livestock production, processing, marketing, and the factors affecting each segment.~~

(~~8~~12) ~~Animal Damage Control. The Animal Damage Control Division is concerned with controlling animals which have the potential of adversely affecting the production of crops and livestock, or human health in instances such as rabies. In most cases, services are supplied in response to requests. This is a cooperative program between the Oklahoma Department of Agriculture and the United States Department of Interior~~Wildlife Services: Prevention of damage caused by wildlife.

SUBCHAPTER 5. DECLARATORY RULING PROCEDURES

35:1-5-1. Request for declaratory ruling

Any person ~~affected by~~who alleges that any rule or order ~~promulgated or issued by~~of the State Board ~~or one of its authorized agents~~of Agriculture interferes or impairs, or threatens to interfere with or impair a legal right of that person may ~~request in writing to~~petition the Board ~~an interpretation or~~and request a declaratory ruling ~~regarding~~on the ~~application~~applicability of ~~such~~the rule or order ~~to the facts furnished with the request~~.

35:1-5-2. Filing and contents of petition

(a) The petition for a declaratory ruling shall be in writing and styled similarly to an ex parte petition filed in a court of law ~~in this State, and shall be filed with the Executive Secretary of the Board in triplicate. It shall state fully, clearly and concisely the rule or order involved or affected, and state the facts giving rise to the need for such ruling, giving all pertinent data necessary for consideration~~.

(b) The petition shall include the following:

(1) A clear and concise statement of the rule or order;

(2) A brief statement of the issues raised by the rule or order that causes the request to be made;

(3) A statement of the petitioner's personal interest in the ruling;

(4) If the rule interpretation was discussed with the agency, the name of the employee and the division;

(5) Any applicable exhibits or further explanation; and

(6) The name and signature, name of business, address, and telephone number of the petitioner.

(c) The petition shall be filed with the Executive Secretary.

35:1-5-3. Consideration of petition; Board action; notice to applicant

(a) The petition for a declaratory ruling ~~will~~shall be considered ~~preliminarily at the next regular meeting of the Board or at a subsequent meeting~~by the Department. ~~In either event, the petitioner shall be notified promptly of the date by the Executive Secretary and shall be entitled to be present in person or represented by counsel. At this meeting, the Board shall determine whether or not to issue a ruling or to continue the matter for hearing upon the petition.~~

(b) ~~The Board may refuse~~If the Department refuses to ~~entertain~~make a ~~petition for a declaratory~~ ruling ~~if it determines that the facts stated in the petition do not afford an adequate basis therefore,~~ or ~~that the experience under the rule or order is not adequate to enable it to make an effective or proper ruling, or that the request is premature, or that the request is one that should be handled through rulemaking procedures, or that there exists other conditions rendering a declaratory ruling inopportune, similar to, though not necessarily identical to, the conditions justifying a court in refusing to enter a declaratory judgment~~begin an individual proceeding within thirty (30) days, the petition shall be deemed denied.

(c) ~~If the Board determines to entertain the petition for the declaratory ruling, it may issue the ruling at its meeting or it may continue the matter to a day certain for further consideration and for hearing of evidence and argument if necessary~~Any recommendation made by the Department shall contain proposed findings of fact and conclusions of law.

(d) If the ~~applicant is not represented at the preliminary consideration, he shall be notified of the ruling if one is issued, in accordance with the rules respecting notice of orders; or, if the matter is continued, he shall be notified of the continuance in accordance with the rules respecting notice of hearings in individual proceedings~~Department begins an individual proceeding, the petitioner shall have an opportunity to be heard.

(e) ~~If the applicant is present or is represented at the preliminary consideration, no further notice of the subsequent hearing than announcement in open meeting is necessary; but, the applicant shall receive a written copy of any ruling that is issued, as in the case of orders~~Any recommendation shall be considered by the Board prior to issuance of a final order on the declaratory ruling.

35:1-5-4. Request for formal hearing [REVOKED]

~~A petitioner for a declaratory ruling, in his petition or by written motion prior to or at the preliminary consideration, may request a formal hearing at which to present evidence in support of his petition, setting forth the substance of the facts to be proved, if they do not appear in his petition. The State Board of Agriculture thereupon will set the matters for formal hearing within sixty (60) days from the date of the preliminary consideration, and notice shall be given as prescribed in 35:1-7-3.~~

35:1-5-5. Joining of other parties affected by rule

(a) If~~, at anytime,~~ it appears ~~from the papers filed or from evidence adduced~~ that the interests of persons other than the petitioner are so affected by the requested ruling that it is improper to entertain the proceedings without hearing them, the Board may refuse to issue a declaratory ruling~~;~~ or~~, in its discretion,~~ it may require them to be made parties~~; and, if the matter can be so handled consistently with the public interest and the efficiency of the Board's procedures, then, in that event, notice shall be served upon them as in individual proceedings, and the matter shall be governed thereafter by the procedure applicable to individual proceedings~~.

(b) Notice shall be served upon the joined persons as in individual proceedings, and the matter shall be governed thereafter by the procedure applicable to individual proceedings.

35:1-5-6. Ruling [REVOKED]

~~If the Board conducts a hearing upon a petition for a declaratory ruling, at the conclusion of the hearing, it may issue the ruling or it may decline to do so upon any of the grounds specified in 35:1-5-3 or 35:1-5-5 or upon any other legal grounds.~~

SUBCHAPTER 7. RULEMAKING PROCEDURES

35:1-7-1. Opportunity for rulemaking hearing

(a) ~~Prior to the adoption, amendment, or repeal of any rule, the~~The Board ~~affords any interested person a reasonable opportunity to submit data, views, or arguments, orally or in writing, to the Board concerning the proposed action on the rule. Should the proposed action on a rule affect one's substantive rights, the opportunity for an oral hearing will be granted if requested in writing by an individual or by an association. If no substantive rights are involved, the opportunity for oral argument or views is within the discretion of the Board~~shall comply with all applicable provisions of the Administrative Procedures Act of Title 75, Section 250 et seq. of the Oklahoma Statutes.

(b) ~~An~~Any interested person may petition the Board requesting the promulgation, amendment, or repeal of a rule. The petition shall be filed with the ~~Executive Secretary of the~~ Board and shall set forth in writing, clearly and concisely, all matters pertaining to the requested action and the reasons for the request. ~~The request should also state whether there is someone known to the petitioner who is concerned with the subject and should be notified of the hearing.~~

~~(c) The Board, at its next regularly scheduled session after the completion of notice, or at a special meeting specified in the notice will hear the petition and notify the petitioner of the ruling within twenty (20) days after the decision. For just cause, the Board may postpone the discussion and ruling on the petition until the next regularly scheduled meeting or at a special meeting, and all parties shall be notified of the postponement if necessary.~~

35:1-7-2. Notice of rulemaking [REVOKED]

~~(a) In any rulemaking action, whether initiated by the Board or by petition, at least twenty (20) days notice shall be given, and the notice shall state the issues involved, the time and place, and the manner in which interested persons may present their views.~~

~~(b) The notice shall be mailed to all interested persons who have made a request of the Board for advance notice of its rulemaking proceedings, or who were specified in the petition for the rules, and shall be published in the Oklahoma Register or its successor publication. The twenty (20) days time shall be calculated from the date of mailing of notice or of the publication, whichever is later.~~

~~(c) Where a public hearing is held in a local area in connection with rulemaking, the Board may give notice of the hearing in local newspapers or in any other manner it may deem effective, in addition to the prescribed notice.~~

35:1-7-3. Rulemaking hearing [REVOKED]

~~(a) The hearing before the Board shall be informal, but in an orderly manner. The attendance of witnesses and production of records may be required in accordance with 35:1-9-17.~~

~~(b) Minutes shall be kept of the official meetings of the Board. Transcripts of all matters pertaining to rulemaking shall be open for public inspection at the office of the Executive Secretary at the State Department of Agriculture.~~

~~(c) Unless otherwise specified by the Board and stated in the notice, all hearings shall be conducted in the offices of the State Department of Agriculture, 2800 North Lincoln Boulevard, Oklahoma City, Oklahoma.~~

35:1-7-4. Effective date of rule [REVOKED]

~~Each rule adopted shall be effective twenty (20) days after filing, as required by 75 O.S. 1961, Section 251, unless a later date is required by statute or specified in the rule, or unless the rule is adopted as an emergency rule.~~

35:1-7-5. Emergency rules [REVOKED]

(a) ~~Emergency rules may be adopted by the Board without the prescribed notice and hearing if the Board, stating in writing its reasons, finds that imminent peril to the public health, safety, or welfare requires this shortened procedure; however, the sufficiency of the reasons is subject to judicial review.~~

~~(b) Emergency rules become effective immediately upon filing with the Secretary of State or at any stated date thereafter less than twenty (20) days. It may continue for not longer than one hundred twenty (120) days, but the Board may adopt an identical rule under the general rulemaking procedures prescribed in 35:1-7-1 through 35:1-7-4.~~

~~(c) The Board shall distribute a copy of the emergency rules to those persons who have requested to be notified of rulemaking activities and shall take other appropriate measures, where reasonable and practical, to notify other persons who may be affected by the rule.~~

SUBCHAPTER 9. INDIVIDUAL PROCEDURES

35:1-9-1. Filing of papers

All papers required to be filed by this Subchapter shall be ~~field~~filed with the ~~Executive Secretary of the Board~~Department.

35:1-9-3. Notice to parties

(a) As soon as possible after the filing of the petition ~~required in 35:1-9-2~~, the ~~Executive Secretary~~Department shall notify the ~~persons named therein~~respondents of the filing and of the date set for hearing. ~~The notice shall contain:~~

~~(1) a statement of the time, place and nature of the hearing and of the relief demanded;~~

~~(2) a brief statement, which may be in the words of the petition or in adequate condensation, of the matters asserted as grounds for relief;~~

~~(3) a citation of the statutes, rules or other legal foundation for the proceeding and for the Board's jurisdiction, giving specific citation and statement of the provisions basis to the proceedings;~~

~~(4) a statement that the persons notified may appear at the hearing and be heard, in person or by counsel, and that they may file such answer or other pleading as they may deem appropriate including a request for more detailed statements of the matters asserted, if this is necessary to define the issues; and,~~

~~(5) a statement that, in the default of appearance, the relief demanded may be granted.~~

(b) The notice shall include a copy of the petition and the date, time, and place of the hearing.

35:1-9-4. Methods of serving notice

(a) ~~All notice or other papers, service of which is required in individual proceedings,~~Service shall be ~~served in one of the following manners:~~made in accordance with Oklahoma law except as provided in this section.

~~(1) personally, upon the notice, by any person appointed to make service by the Executive Secretary of the Board, and in any manner authorized by the law of this State for the personal service of summons in proceedings in the state courts; or~~

~~(2) by certified mail, mailed by the Executive Secretary of the Board, or by such other person as he may direct, addressed to the notice at such post office address as he may have filed with the Board, or if no such address has been filed, at the notice's last known post office address; or~~

~~(3) if no known post office address can be discovered in the exercise of due diligence, by publication in such newspapers and for such time, or by posting in such places and for such time as the Board may direct as most likely to give opportunity for information to the noticee.~~

(b) Where the Department is serving notice, personal service may be made by any authorized agent of the Board.

(c) Service by certified mail shall be effective on the date of receipt or, if refused, on the date of refusal by the respondent.

[OAR Docket #06-1082; filed 5-25-06]

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

[OAR Docket #06-1088]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Fine Schedules
Part 17. ~~Water Quality~~Agricultural EnvironmentalManagement Violations [NEW]
35:3-1-30. [NEW]
35:3-1-31. [NEW]
35:3-1-32. [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2) and (29), 20-1 et seq., 10-9 et seq., and 10-9.16; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
Comment period:
February 15, 2006 through March 17, 2006
Public hearing:
March 17, 2006
Adoption:
March 22, 2006
Submitted to Governor:
March 23, 2006
Submitted to House:
March 23, 2006
Submitted to Senate:
March 23, 2006
Gubernatorial approval:
April 21, 2006
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2006
Final adoption:
May 18, 2006
Effective:
June 25, 2006
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The purpose of the proposed rules is to create a fine matrix for the Agricultural Environmental Management Services Division to address the imposition of administrative penalties in relation to violations of the Oklahoma Agricultural Code and corresponding rules. The implementation of the fine matrices in the rules will provide guidance to the Department and to the public on potential fines for specific violations. Penalties for referenced violations will be more consistently applied, while still allowing the Department to make determinations on a case-by-case basis.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. FINE SCHEDULES

PART 17. ~~WATER QUALITY~~ AGRICULTURAL ENVIRONMENTAL MANAGEMENT VIOLATIONS

35:3-1-30. Violations of the Oklahoma Concentrated Animal Feeding Operations Act

(a) Licensing violations:

(1) Failure to obtain a Concentrated Animal Feeding Operations license pursuant to 2 O.S. § 20-6.

(A) First violation - $5,000 to $10,000
(B) Second violation - $7,500 to $10,000
(C) Subsequent violations - $10,000

(2) Failure to properly design or construct a waste retention structure pursuant to 2 O.S. § 20-1 et seq.:

(A) First violation - $5,000 to $10,000
(B) Second violation - $7,500 to $10,000
(C) Subsequent violations - $10,000

(3) Failure to renew license by deadline pursuant to 2 O.S. § 20-7.

(A) First violation - $100 to $500
(B) Second violation - $250 to $750
(C) Subsequent violations - $1,000 to $5,000

(4) Failure to submit or complete a transfer application in a timely manner pursuant to 2 O.S. § 20-7.
(A) First violation - $5,000 to $10,000
(B) Second violation - $7,500 to $10,000
(C) Subsequent violations - $10,000
(5) Failure to obtain presite approval prior to construction pursuant to 2 O.S. § 20-9.
(A) First violation - $5,000 to $10,000
(B) Second violation - $7,500 to $10,000
(C) Subsequent violations - $10,000
(b) Operating violations:
(1) Failure to obtain required education for licensed managed feeding operations pursuant to 2 O.S. § 20-7.
(A) First violation - $100 to $500
(B) Second violation - $250 to $750
(C) Subsequent violations - $750 to $1,500
(2) Failure to comply with Pollution Prevention Plan requirements, obtain approval for amendment to PPP that impacts the potential to discharge, or failure to amend PPP pursuant to 2 O.S. § 20-9.
(A) First violation - $1,000 to $5,000
(B) Second violation - $2,500 to $7,500
(C) Subsequent violation - $5,000 to $10,000
(3) Failure to maintain records pursuant to 2 O.S. § 20-1 et seq.
(A) First violation - $1,000 to $5,000
(B) Second violation - $2,500 to $7,500
(C) Subsequent violation - $5,000 to $10,000
(4) Failure to comply with Best Management Practices pursuant to 2 O.S. § 20-10.
(A) First violation - $1,000 to $5,000
(B) Second violation - $2,500 to $7,500
(C) Subsequent violation - $5,000 to $10,000
(5) Failure to prevent a discharge to waters of the state pursuant to 2 O.S. § 20-10.
(A) First violation - $5,000 to $10,000
(B) Second violation - $7,500 to $10,000
(C) Subsequent violations - $10,000
(6) Failure to notify the Department of a discharge to waters of the state pursuant to 2 O.S. § 20-10.
(A) First violation - $5,000 to $10,000
(B) Second violation - $7,500 to $10,000
(C) Subsequent violations - $10,000
(7) Failure to provide written report of a discharge or failure to sample a discharge pursuant to 2 O.S. § 20-10.
(A) First violation - $1,000 to $5,000
(B) Second violation - $2,500 to $7,500
(C) Subsequent violation - $5,000 to $10,000
(8) Failure to comply with the Animal Waste Management Plan pursuant to 2 O.S. § 20-10.
(A) First violation - $1,000 to $5,000
(B) Second violation - $2,500 to $7,500
(C) Subsequent violation - $5,000 to $10,000
(9) Failure of a licensed managed feeding operation to provide the recipient of animal waste with a current sample analysis or to notify them of animal waste and land application requirements of the concentrated animal feeding operations act pursuant to 2 O.S. § 20-10.
(A) First violation - $1,000 to $5,000
(B) Second violation - $2,500 to $7,500
(C) Subsequent violation - $5,000 to $10,000
(10) Failure to perform sampling of water, animal waste, effluent, or soils pursuant to 2 O.S. § 20-10.
(A) First violation - $1,000 to $5,000
(B) Second violation - $2,500 to $7,500
(C) Subsequent violation - $5,000 to $10,000
(11) Failure to develop, revise, or adhere to a carcass disposal plan pursuant to 2 O.S. § 20-10.
(A) First violation - $1,000 to $5,000
(B) Second violation - $2,500 to $7,500
(C) Subsequent violation - $5,000 to $10,000
(12) Failure of a licensed managed feeding operation to develop, revise, or adhere to an Odor Abatement Plan pursuant to 2 O.S § 20-11.
(A) First violation - $1,000 to $5,000
(B) Second violation - $2,500 to $7,500
(C) Subsequent violation - $5,000 to $10,000
(13) Failure to maintain no hydrologic connection pursuant to 2 O.S. § 20-12.
(A) First violation - $1,000 to $5,000
(B) Second violation - $2,500 to $7,500
(C) Subsequent violation - $5,000 to $10,000
(14) Failure to install or maintain monitoring wells or leak detection system pursuant to 2 O.S. § 20-12.
(A) First violation - $1,000 to $5,000
(B) Second violation - $2,500 to $7,500
(C) Subsequent violation - $5,000 to $10,000
(15) Failure to maintain the liner to inhibit infiltration of wastewaters pursuant to 2 O.S. § 20-12.
(A) First violation - $1,000 to $5,000
(B) Second violation - $2,500 to $7,500
(C) Subsequent violation - $5,000 to $10,000
(16) Failure to perform a required site evaluation on the waste retention structure pursuant to 2 O.S. § 20-12.
(A) First violation - $1,000 to $5,000
(B) Second violation - $2,500 to $7,500
(C) Subsequent violation - $5,000 to $10,000
(17) Failure to report suspected leakage of a waste retention structure to the Department pursuant to 2 O.S. § 20-12.
(A) First violation - $1,000 to $5,000
(B) Second violation - $2,500 to $7,500
(C) Subsequent violation - $5,000 to $10,000
(18) Disposing of any materials other than animal waste into the waste retention structure pursuant to 2 O.S. § 20-12.
(A) First violation - $1,000 to $5,000
(B) Second violation - $2,500 to $7,500
(C) Subsequent violation - $5,000 to $10,000
(19) Failure to comply with any land application setback pursuant to 2 O.S. § 20-19.
(A) First violation - $5,000 to $10,000
(B) Second violation - $7,500 to $10,000
(C) Subsequent violations - $10,000

(20) Failure to install or maintain an antipollution device or complete disconnect on land application equipment pursuant to 2 O.S. § 20-13.
(A) First violation - $1,000 to $5,000
(B) Second violation - $2,500 to $10,000
(C) Subsequent violations - $10,000
(21) Failure of a poultry laying operation to immediately comply with an emergency order by the Board regarding land application pursuant to 2 O.S. § 20-27.
(A) First violation - $5,000 to $10,000
(B) Second violation - $7,500 to $10,000
(C) Subsequent violations - $10,000
(c) Miscellaneous violations:
(1) Making a false statement, representation, or certification in, omitting material data from, or tampering with any application for a license or notice relating to the determination of affected property owners pursuant to 2 O.S. § 20-7.
(A) First violation - $5,000 to $10,000
(B) Second violation - $7,500 to $10,000
(C) Subsequent violations - $10,000
(2) Interference with an authorized agent of the Board in the conducting of official duties pursuant to 2 O.S. § 20-14.
(A) First violation - $5,000 to $10,000
(B) Second violation - $7,500 to $10,000
(C) Subsequent violations - $10,000
(3) Failure to pay any required fee or the cost of sampling monitoring wells pursuant to 2 O.S. §§ 20-12 or 20-16.
(A) First violation - $100 to $500 or twice the cost of the required fee or cost, whichever is larger.
(B) Second violation - $250 to $750 or twice the cost of the required fee or cost, whichever is larger.
(C) Subsequent violations - $1,000 to $5,000 or twice the cost of the required fee or cost, whichever is larger.
(4) Failure to comply with any other law or rule pursuant to the Oklahoma Concentrated Animal Feeding Operations Act.
(A) First violation - $500 to $5,000
(B) Second violation - $2,500 to $7,500
(C) Subsequent violations - $5,000 to $10,000
(5) Failure to take reasonable and necessary action to avoid pollution of any stream, lake, river, or creek pursuant to 2 O.S. § 20-26.
(A) First violation - $5,000 to $10,000
(B) Second violation - $7,500 to $10,000
(C) Subsequent violations - $10,000
(6) Failure to comply with surety requirements pursuant to 2 O.S. § 20-17.
(A) First violation - $1,000 to $5,000
(B) Second violation - $2,500 to $10,000
(C) Subsequent violations - $10,000
(d) Each day a violation is committed or continues is deemed to be a separate offense.
(e) In no event shall this fine matrix limit the imposition of a different penalty when circumstances require.

35:3-1-31. Violations of the Oklahoma Registered Poultry Feeding Operations Act

(a) Failure to comply with any law or rule pursuant to the Oklahoma Registered Poultry Feeding Operations Act.
(1) First violation - $100 to $200
(2) Second violation - $150 to $200
(3) Subsequent violations - $200
(b) Each day a violation is committed or continues is deemed to be a separate offense.
(c) In no event shall this fine matrix limit the imposition of a different penalty when circumstances require.

35:3-1-32. Violations of the Oklahoma Poultry Waste Applicators Certification Act

(a) Failure to comply with any law or rule pursuant to the Oklahoma Poultry Waste Applicators Certification Act.
(1) First violation - $100 to $200
(2) Second violation - $150 to $200
(3) Subsequent violations - $200
(b) Each day a violation is committed or continues is deemed to be a separate offense.
(c) In no event shall this fine matrix limit the imposition of a different penalty when circumstances require.

[OAR Docket #06-1088; filed 5-25-06]

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

[OAR Docket #06-1076]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
35:13-1-1. through 35:13-1-5. [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agriculture Code; 2 O.S. 2001 §§ 2-4(2) and (29), and 11-20 et seq.
DATES:
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February 15, 2006 through March 17, 2006
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March 17, 2006
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Submitted to Senate:
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April 21, 2006
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2006
Final adoption:
May 18, 2006
Effective:
June 25, 2006
SUPERSEDED EMERGENCY ACTIONS:
Superseded rules:
N/A

INCORPORATIONS BY REFERENCE:
Incorporated standards:
The Distilled Spirits for Fuel Use regulations found in Title 27, Code of Federal Regulations (CFR) (2005 Revision)
Incorporating rules:
35:13-1-1 through 35:13-1-5
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday, at Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, OK 73105, 405-522-4576
ANALYSIS:
The proposed rules implement the provisions of the Oklahoma Fuel Alcohol Act and provide procedures for permitting alcohol fuel plants in Oklahoma.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

35:13-1-1. Incorporation by reference of federal distilled spirits for fuel use regulations

The Distilled Spirits for Fuel Use regulations found in Title 27 of the Code of Federal Regulations (CFR) (2005 Revision), Part 19.901 et seq. for the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:13-1-2.

35:13-1-2. Deleted regulations

The following sections of the Code of Federal Regulations governing distilled spirits for fuel use of the United States Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau incorporated by reference under 35:13-1-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 27 CFR §§ 19.905, 19.906, 19.955, 19.956, 19.957, 19.958, and 19.959 (2005 Revision).

35:13-1-3. Definitions

(a) All words or terms defined or used in the Federal regulations incorporated by reference shall mean the state equivalent or counterpart to those word or terms.
(b) The following words or terms, when used in this subchapter, shall have the following meaning, unless the context clearly indicates otherwise:
(1) **"Commodities"** means nonperishable whole grains or seeds.
(2) **"Producer"** means any person planting, raising, growing, or harvesting commodities.

35:13-1-4. Permit required

(a) Any person engaging in the production of alcohol for use as a motor fuel shall obtain a permit from the Department.
(b) Any medium or large alcohol fuel producer that receives commodities from grain producers who do not receive compensation for the grain at the time of delivery or title is not transferred at the time of delivery shall obtain a public warehouse charter to operate a public commodity storage warehouse pursuant to the Oklahoma Public Warehouse and Commodity Storage Indemnity Act.

35:13-1-5. Inspections

(a) The Department may inspect any facility to determine compliance with the Oklahoma Fuel Alcohol Act.
(b) The inspection shall include but not be limited to inspections of the equipment at the facility and records.

[OAR Docket #06-1076; filed 5-25-06]

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

[OAR Docket #06-1078]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agriculture Code; 2 O.S. 2001 §§ 2-4(2), (7), and (29), 6-1 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
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February 15, 2006 through March 17, 2006
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Gubernatorial approval:
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June 25, 2006
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules amend the definition of official ear tag to include any form of livestock identification approved by USDA or the State Veterinarian, and can include RFID tags. In addition the rules provide clean up to several animal health regulations. The rules also clarify the Department's ability to indemnify livestock owners when an animal is ordered destroyed. Finally, the rules require cats and ferrets to obtain a rabies vaccination prior to entering Oklahoma, similar to the requirement for dogs.
CONTACT PERSON:
Dr. Becky Brewer-Walker, Director, Animal Industry Services, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-6134

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

35:15-1-1. Purpose

(a) ~~The rules of this Chapter have been adopted for the purpose of complying with the provisions of the Agricultural Code, 2 O.S. Section 1-1, et seq.~~ This Chapter relates to statutes assigned to the Animal Industry Services ~~division for administration,~~ with responsibility for ~~two main areas Meat Inspection Service and~~ Animal Health ~~Service~~.

(b) ~~The Meat Inspection Service is responsible for inspecting animals, meat and meat food products through all phases of processing; and for supervising the sanitary practices and product formulations used by the producer. Analytical determinations are made to assure a wholesome unadulterated product meeting legal requirements. This service is also charged with inspection and control of distressed items and products unfit for human consumption such as truck-wrecked animals.~~

~~(c)~~ The ~~Animal Health Service~~division is responsible for the detection, eradication, and control of livestock and poultry diseases and parasites. Specific responsibilities include detecting, controlling and eradicating livestock diseases on farms and ranches, in auction markets, feedlots and other concentration points throughout the state; monitoring the interstate and intrastate movement of animals and poultry ~~into, through and out of Oklahoma to~~ verify compliance with state and federal laws, rules, and regulations; controlling the use of vaccines and biologics; and preventing the spread of diseases transmissible to man.

35:15-1-2. Definitions

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

"Accredited veterinarian" means a veterinarian approved by the United States Department of Agriculture (USDA) to perform functions required for state or cooperative state and federal animal disease control and eradication programs.

"Certificate of veterinary inspection" means an official document or its electronic equivalent approved by the chief livestock official of the state of origin issued by an accredited veterinarian at the point of origin of a shipment of animals that includes the name and address of the consignor; the name and address of the consignee; the entry permit number, if applicable; the age, sex, number, and breed of the animal; sufficient identifying marks or tags to positively identify each animal; and the results of all required tests. It shall also include a record of a physical examination of the animal verifying that each animal is free from visible evidence of any contagious, infectious, or communicable diseases and that the animals do not originate from an area of quarantine, infestation, or infection. A certificate of veterinary inspection is valid for thirty (30) days after the date of issuance. The term certificate of veterinary inspection shall also include an official health certificate, an official certificate, or a certificate.

"Designated epidemiologist" means an epidemiologist selected by the State Veterinarian who has been designated to perform those functions necessary for the classification of livestock suspected to be infected with a particular disease, based on an evaluation of test results and consideration of the animal and herd history, as well as other epidemiological factors.

"Official ear tag" means a metal ear tag that provides unique identification for each animal by conforming to the national uniform nine (9) character alphanumeric ear tag system or any other official form of identification approved by USDA or the State Veterinarian, including but not limited to electronic identification or radio frequency identification (RFID).

"Quarantine" means a written notice or order issued by an authorized agent of the Board showing the boundaries of the area or premise affected, the animals restricted, and conditions, if any. No livestock held under quarantine may be moved or released without a written permit or quarantine release signed by an authorized agent.

"State animal health official" means the state animal health official, or designee, who is responsible for the livestock and poultry disease control and eradication programs in the state.

35:15-1-3. Indemnity

(a) An owner may apply for indemnity for each animal ordered depopulated by the State Veterinarian for disease eradication.

(b) The owner shall provide proof of the fair market value of each animal for which indemnity is requested.

(c) Indemnity shall not be paid to an owner unless the Board determines the following:

(1) Funds for indemnity are available;

(2) Amount of indemnity based on the fair market value of the animals; and

(3) Indemnity is warranted due to the circumstances of depopulation.

(d) In no case shall the indemnity exceed fifty dollars ($50.00) per head for any depopulated animal.

(e) The Board may deny indemnity to any owner found to have not acted in good faith in seeking indemnity.

SUBCHAPTER 11. IMPORTATION OF LIVESTOCK, POULTRY, AND PETS

PART 3. OFFICIAL HEALTH CERTIFICATES

35:15-11-5. Official health certificate

An official health certificate is ~~the legible certificate made on an official form from~~an official document or its electronic equivalent approved by the chief livestock official of the state of origin ~~or from the Animal Health Division, Agricultural Research Service, United States Department of Agriculture,~~and issued by an accredited veterinarian ~~and approved by the chief livestock sanitary official of the state~~at the point of origin of a shipment of animals that includes the name and address of the consignor; the name and address of the consignee; the entry permit number, if applicable; the age, sex, number, and breed of the animal; sufficient identifying marks or tags to positively identify each animal; and the results of all required tests. It shall also include a record of a physical examination of the animal verifying that each animal is free from visible evidence of any contagious, infectious, or communicable diseases and that the animals do not originate from an area of quarantine, infestation, or infection. A certificate of veterinary inspection is valid for thirty (30) days after the date of issuance. The term official health certificate shall also include a certificate of veterinary inspection, an official certificate, or a certificate.

PART 7. LIVESTOCK

35:15-11-15. Definitions

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

"Accredited tuberculosis free herd" ~~(cervidae)~~ means a herd of cervidae that has passed three (3) or more consecutive official tuberculosis tests of all eligible animals conducted at not less than nine (9) nor more than fifteen (15) month intervals, has no evidence of bovine tuberculosis, and meets the standards of Subchapter 42 of Title 35 of the Oklahoma Administrative Code.

~~**"Accredited veterinarian"** means a veterinarian approved by the Deputy Administrator of the United States Department of Agriculture (USDA) to perform functions required for state or cooperative state and federal animal disease control and eradication programs.~~

"Certified Brucellosis Free Herd" ~~(cervidae)~~ means a herd of cervidae that has passed three (3) or more consecutive official brucellosis tests of all eligible animals conducted at not less than nine (9) nor more than fifteen (15) month intervals, has no evidence of brucellosis, and meets the standards of Subchapter 45 of Title 35 of the Oklahoma Administrative Code.

"Cervidae" means deer, elk, moose, caribou, and all related species in the cervidae family.

~~**"Official ear tag"** means a metal ear tag that provides unique identification for each animal by conforming to the national uniform nine (9) character alphanumeric ear tag system.~~

"Qualified tuberculosis free herd" ~~(cervidae)~~ means a herd of cervidae that has passed at least one (1) official test of all eligible animals within the previous twelve (12) months but is not classified as an accredited herd, has no evidence of bovine tuberculosis, and meets the standards of Subchapter 42 of Title 35 of the Oklahoma Administrative Code.

35:15-11-17. ~~Dog~~Companion animal importation

All dogs, cats, and ferrets over four (4) months of age, shipped or transported into Oklahoma, shall be admitted only when accompanied by an official health certificate ~~which certifies~~certifying they did not originate ~~within~~from an area under quarantine for rabies, have not been exposed to rabies within the previous six (6) months, and have been officially vaccinated against rabies within twelve (12) months prior to the date of entry with an approved rabies vaccine or within three (3) years with the use of a three (3) year vaccine if the primary vaccination and subsequent boosters are documented on the health certificate. The date of the ~~vaccination~~vaccinations, subsequent boosters, and the product name ~~must~~shall be recorded on the health certificate.

SUBCHAPTER 17. BOVINE AND BISON BRUCELLOSIS

PART 1. DEFINITIONS

35:15-17-1. Definitions

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

"Affected herd" means a herd of cattle ~~or bison~~ that has had a brucellosis reactor disclosed from an on-farm test or ~~which~~ is the herd of origin of a market cattle identification brucellosis reactor from which a field strain Brucella abortis bio-variety has been isolated.

"Animals" means all bovine, dairy, and beef breeds and bison.

"Approved brucella vaccine" means a product that is approved by and produced under license of the ~~U.S.~~United States Department of Agriculture for injection into cattle or bison to enhance their resistance to brucellosis.

"Cattle" means bison, dairy, and beef animals.

"Commuter herd" means all cattle ~~and bison~~ under common ownership or supervision, that are located on one or

more premises in two or more states and there an interchange or interstate movement of animals between premises in those states as part of the normal farming, breeding or ranching operation without a change of ownership. A commuter herd agreement ~~must~~shall be completed and approval of commuter herd status ~~must~~shall be obtained from ~~all Chief Animal Health Officials~~each chief animal health official of all states in which the herd resides.

"Domestic livestock" means those species of animals that have adapted to life in intimate association with, and provide advantage to man for use as food, fiber (furs and leather), labor and companionship. This adaptation usually involves the modification of growth or other traits through the provision of food, protection from enemies and selective breeding, thereby reducing the ability of that species to survive in the wild.

"Exposed animals" means animals that are part of a known affected herd or have been in contact with brucellosis reactors in marketing channels for periods of 24 hours or periods of less than 24 hours if the reactor has recently aborted, calved, or has a vaginal or uterine discharge. ~~Such~~These animals are considered to be exposed regardless of the blood test results, and ~~must~~shall be placed under quarantine and restricted pending slaughter or testing after return to the herd of origin. These animals shall be identified with a hot iron letter "S" brand on the tailhead at least 2x2 inches, prior to movement from the premise.

"Farm of origin of cattle~~ and bison~~" means a farm or other premises where the cattle~~ or bison~~ to be shipped were born or have been kept for not less than four (4) months prior to the date of shipment and ~~which~~the premises within the four (4) months prior to the date of shipment have not been used to assemble cattle ~~or bison~~ from any other premises.

"Feedlot" means a confined drylot area for finish feeding of animals on concentrated feed with no facilities for pasturing or grazing. The feedlot may not hold any test eligible animals of unknown status or "S" branded animals.

"Herd" means all cattle (genus Bos) and bison (genus Bison bison) under common ownership or supervision, that are grouped on one or more parts of any single premise (lot, farm, or ranch) or on two or more premises geographically separated, but ~~which~~ have had an interchange movement or contact. Such contact shall be accepted as fact unless otherwise established by the owner and consistent with the findings of the epidemiologic investigation. Groups of animals under multiple ownership on common premises, such as community pastures, grazing association allotments, etc., shall also be considered as a herd. For brucellosis eradication purposes such herds shall include all other groups of animals owned by those persons unless the veterinary medical officer, on an epidemiologic investigation, establishes that association has not occurred.

"Herd test" means a test ~~which must include~~that includes all animals over six (6) months of age ~~(or current USDA Uniform Methods and Rules for Brucellosis Eradication designation)~~ except steers, spayed heifers and official vaccinates of the dairy breeds under 20 months of age, and of the beef breed and bison under 24 months of age. Bulls, steers, and female animals ~~being~~ held in feedlots ~~which meet~~meeting the requirements of quarantined feedlots as defined in 35:15-17-5 are exempt from herd test requirements. Breeding animals tested shall be identified with an official eartag or other permanent identification.

"High risk herd" means those herds of cattle ~~or bison~~ from which an MCI test or herd test reactor has been disclosed as an adjacent or exposed herd within the previous five (5) years.

"Individual herd plan" means a herd management and testing plan designed by the herd owner~~, his veterinarian, if so requested,~~ and a veterinarian of the Cooperative Brucellosis Eradication Program ~~which~~that will control and ~~eventually~~ eradicate brucellosis from an affected herd~~. A~~ and shall include a similar plan for determining the true status of suspects and preventing exposure to brucellosis within the herd~~ is also within the meaning of the term "individual herd plan.~~"

"Market test animals" means test eligible animals moving in trade channels through auction markets, stockyards, commission firms or to slaughtering establishments; also those animals assembled at farms or ranches that are being readied for immediate movement to markets, stockyards, slaughtering establishments or other sales. ~~Such~~The animals shall be identified by eartag or backtag to the herd of origin prior to or at the first point of concentration in marketing channels. All test eligible animals shall be tested prior to removal from the sale premises.

~~**"Official certificate"** means the legible certificate made on an official form from the state of origin or from the Animal and Plant Health Inspection Service, United States Department of Agriculture, and issued by an accredited veterinarian. The certificate shall contain the name and address of the consignor and the consignee, age, sex, number, breed of livestock, and sufficient identifying marks and tags to positively identify said livestock, and the results of all tests conducted on said livestock.~~

~~**"Official eartag"** means a metal identification eartag conforming to the national uniform eartagging system, including state code numbers, letters that may denote use when applied, appropriate color (e.g., orange for vaccination), and four numbers progressing serially without duplication. Only state or federal animal health personnel, approved veterinary technicians, or approved accredited veterinarians may possess any official eartag and their use shall be properly recorded on the appropriate form and reported to the state or federal office.~~

"Official test" means any serologic or bacteriologic test ~~which is~~ recognized by and listed in the USDA Uniform Methods and Rules of Brucellosis Eradication ~~and/~~or the Code of Federal Regulations. The official test sample ~~must~~shall be collected by an accredited veterinarian or an employee of the State-Federal Brucellosis Program. The test ~~must~~shall be conducted in an official State-Federal Brucellosis Laboratory or licensed and approved Auction Market Laboratory, or by an employee of the State-Federal Brucellosis Program in field situations. All tests ~~must~~shall be confirmed in an official State-Federal Brucellosis Laboratory.

"Official vaccinate" means a female bovine or bison animal vaccinated against brucellosis with an approved brucella vaccine between four (4) and ten (10) months of age. All

vaccination ~~must~~shall be conducted under the supervision of a federal or state veterinary official or accredited veterinarian. Vaccinated animals ~~must~~shall be permanently identified as vaccinates and reported at the time of vaccination to the appropriate state or federal agency cooperating in the eradication of brucellosis.

"Permit" means~~, except for the term "permit for entry" and "S" brand permit",~~ an official document (USDA VS Form 1-27 or comparable State Form) ~~which~~that is required to accompany "B" branded cattle ~~and bison~~ (and exposed cattle ~~and bison~~ moved under official seal~~)~~, issued by a veterinary services representative, state representative or accredited veterinarian ~~which~~that lists the identification tag, tattoo, USDA backtag, registration number, or similar identification, reactor tag number, owner's name and address, origin and destination, number of animals covered, and the purpose of the movement. If a change in destination becomes necessary a new permit ~~must~~shall be prepared. No diversion from the permitted destination is allowed. ~~Distribution of the copies is~~ Copies of the permit shall be distributed in accordance with the instructions printed on the official document ~~and must be followed~~.

"Permit for entry" means a premovement authorization for entry of cattle ~~and bison~~ into a state from the animal health official in that state. The authorization ~~will~~shall state the conditions under which movement may be made, and these conditions may be in addition to the requirements of the USDA Uniform Methods and Rules for Brucellosis Eradication (UM&R) and Code of Federal Regulations.

"Rodeo bulls" means male cattle kept solely for performances at rodeos.

"S brand permit" means any document ~~which is~~ required to accompany animals in marketing channels having a restricted destination. It ~~must~~shall show the origin, the destination, the number of restricted animals, the purpose of the movement, the USDA backtag numbers (when applied serially, only the beginning and the ending number need be recorded), and a statement certifying to the "S" brand identification. It shall be prepared at the point of origin by an accredited veterinarian, a representative of the animal health officials, or a designated official at a quarantined feedlot. A copy ~~of this "S" brand permit~~ shall be maintained at the quarantined feedlot~~. A~~ and a copy ~~of this "S" brand permit~~ shall be immediately sent to the state animal health official with the original accompanying the animals. The original shall be delivered at the destination and retained at that location for a minimum of six (6) months.

"S branded animals" means animals ~~which have been~~ identified by branding with a hot iron the "S" (at least 2x2 inches) placed on the tailhead. "S" branding is required for suspect animals and movement of exposed animals from affected herds.

"Test eligible animals" means all animals 18 months of age, as determined by the loss of first pair of temporary incisor teeth, except exposed animals ~~which~~that have been "S" branded, steers, spayed heifers, official vaccinates of dairy breeds under 20 months of age, and official vaccinates of beef breeds and bison under 24 months of age ~~which~~that are not parturient or postparturient.

"Tested herds" means a herd of animals for which the state has records showing that the herd has been subjected to official testing for brucellosis within 12 months prior to movement~~,~~ and ~~that~~ the herd is not known to be affected with brucellosis. ~~(This classification of herds replaces the former "Qualified herds.")~~

SUBCHAPTER 19. POULTRY REGULATIONS

35:15-19-7. Permitted testers

(a) ~~Requirements~~Each applicant to become a permitted tester~~.~~ shall complete the following:

(1) ~~All applicants shall submit~~Submit a completed application to attend a Pullorum/Typhoid Testing School on a form approved by the Board~~.~~;

(2) ~~All applicants shall submit~~Submit a registration card and fee prior to attending the Pullorum/Typhoid Testers' certification school~~.~~;

(3) ~~All applicants shall pass~~Pass a written examination with a score of at least 70% and successfully demonstrate proper blood testing techniques while attending the certification school ~~prior to being certified as a permitted tester.~~; and

(4) ~~All applicants shall submit~~Submit a signed Permitted Tester's Agreement form and Pullorum/Typhoid Tester's Permit fee to the Board.

(b) ~~Requirements of a~~Each permitted tester~~.~~ shall

(1) ~~All permitted testers shall comply~~Comply with all rules adopted by the Board~~.~~;

(2) ~~All permitted testers shall comply~~Comply with the procedures for sample collecting and blood testing as approved by the Board~~.~~;

(3) ~~All permitted testers shall submit~~Submit test reports, on all birds tested, to the Board within ten (10) days following completion of tests~~.~~; and

(4) ~~All permitted testers shall attend~~Attend a recertification school at least once every three (3) years.

~~(5) Any falsification of an official document or testing report shall be grounds for revocation of the pullorum-typhoid tester's permit.~~

(c) ~~Requirements for recertification as a~~Each permitted tester~~.~~ shall complete the following for recertification:

(1) ~~All permitted testers shall submit~~Submit a registration card and fee prior to attending the Pullorum/Typhoid Testers' recertification school~~.~~;

(2) ~~All permitted testers shall attend~~Attend and successfully complete all the requirements of a recertification school ~~prior to being recertified as a permitted tester.~~:

(A) Any permitted tester with six (6) or more years of experience may complete requirements through online or mail recertification.

(B) Any permitted tester with less than six (6) years shall attend classes to obtain recertification.

(3) ~~All permitted testers shall submit~~Submit a signed Permitted Tester's Agreement form and Pullorum/Typhoid Tester's Permit fee to the Board.

(d) Any falsification of an official document or testing report shall be grounds for revocation of a pullorum-typhoid tester's permit.

SUBCHAPTER 40. BOVINE TUBERCULOSIS

PART 1. DEFINITIONS

35:15-40-1. Definitions

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

"Accredited Free State" means a state that maintains full compliance with all of the provisions of the USDA Uniform Methods and Rules for bovine tuberculosis eradication and where no evidence of bovine tuberculosis has been disclosed for five (5) or more years.

"Accredited Herd" means a herd of cattle, bison, or dairy goats that has passed at least two (2) consecutive negative caudal fold tuberculin tests at an interval of not less than ten (10) months nor more than fourteen (14) months, has no other evidence of bovine tuberculosis, and meets the standards of this Subchapter.

~~**"Accredited Veterinarian"** means a veterinarian licensed by the Oklahoma Board of Veterinary Medical Examiners and approved by the Deputy Administrator of APHIS to perform functions required for cooperative State/Federal animal disease control and eradication programs.~~

"Adjacent Herd" means a group or groups of animals sharing common pasture, or having other direct contact with an affected herd, and herds containing previous purchases from or exchanges with an affected herd. Herds separated by a single fence are considered contact or adjacent herds.

"Affected Herd" means a herd of cattle, bison, or dairy goats that contains, or has recently contained, one (1) or more animals infected with Mycobacterium bovis and that has not passed the required tests necessary for release from quarantine.

"Annual Tests" means those tests conducted at intervals of not less than ten (10) months nor more than fourteen (14) months.

"Auction" means a public sale of cattle, bison, or dairy goats to the highest bidder.

"Auctioneer" means a person who sells or makes a business of selling cattle, bison, or dairy goats at auction.

"Bison" means a bovine-like animal (genus Bison) commonly referred to as American buffalo or buffalo.

"Bovine Tuberculosis" means a disease in cattle, bison, or dairy goats caused by Mycobacterium bovis.

"Cattle" means all domestic bovine (genus Bos).

"Caudal Fold Tuberculin (CFT) Test" means the intradermal injection of 0.1 milliliters of USDA bovine purified protein derivative (PPD) tuberculin into either side of the caudal fold, with reading by visual observation and palpation seventy-two (72) hours (+ or - 6 hours) following injection. Animals or herds of unknown status shall not be subjected to retest at intervals of less than sixty (60) days.

"Commission Firm" means a person, partnership, or corporation that buys or sells livestock as a third party and reports to the seller or to the buyer details of the transactions whether or not a fee is charged for the services.

"Commission Sales" means those sales that are conducted by a third party who reports to the seller or to the buyer details of the transactions.

"Comparative Cervical Tuberculin (CCT) Test" means the intradermal injection of biologically balanced bovine PPD tuberculin and avian PPD tuberculin at separate sites in the cervical area and a determination as to the probable presence of bovine tuberculosis (M. bovis) by comparing the responses of the two (2) tuberculins seventy-two (72) hours (+ or - 6 hours) following injection.

"Dairy cattle" means any typical dairy framed animals as determined by the inspecting veterinarian.

"Dairy Goats" means domestic caprine (genus Capra) kept for the purpose of producing milk for human consumption.

"Dealer" means any person, firm, or partnership engaged in the business of buying or selling cattle, bison, or dairy goats in commerce, either on ~~his or her~~their own account or as the employee or agent of the vendor or purchaser, or any person engaged in the business of buying or selling cattle, bison, swine, sheep, or dairy goats in commerce on a commission basis. The term shall not include ~~a~~any person who buys or sells cattle, bison, or dairy goats as a part of ~~his or her~~their own bona fide breeding, feeding, or dairy operation; is not engaged in negotiating the transfer of cattle, bison, or dairy goats; or receives cattle, bison, or dairy goats exclusively for immediate slaughter on ~~his or her~~their own premise.

"Designated feedlot" means a feedlot under official state quarantine and approved by the State Veterinarian and federal animal health officials. The designated feedlot may include pens or pasture. All animals leaving the feedlot shall move directly to slaughter and shall be accompanied by permit.

"Designated pens" or **"designated pastures"** means pens or pastures associated with any feedlot that has a Memorandum of Understanding with the State Veterinarian to house cattle destined for slaughter.

"Direct Shipment to Slaughter" means the shipment of tuberculosis reactors, tuberculosis suspects, and tuberculosis exposed cattle, bison, or dairy goats from the premises of origin directly to a slaughter establishment without diversion to assembly points such as~~:~~ auctions, dealers or commission firm premises, public stockyards, and feedlots.

"Eradication" means the complete elimination of bovine tuberculosis from cattle and bison in the state so that the disease does not appear unless introduced from another species or from outside the state.

"Exposed Animals" means cattle, bison, or dairy goats that have been exposed to bovine tuberculosis by reason of associating with known tuberculous animals.

"Feedlot" means a confined dry lot area for the finish feeding of animals on a concentrated feed with no facilities for pasturing or grazing.

~~**"Group"** means one or more animals.~~

"Herd" means ~~a group of~~one or more cattle, bison, or dairy goats maintained on common ground or two (2) or more groups of cattle, bison, or dairy goats under common ownership or supervision that are geographically separated but can have an interchange or movement without regard to health status.

"Herd Depopulation" means the removal of all cattle, bison, swine, and dairy goats exposed to bovine tuberculosis in a herd directly to slaughter prior to any restocking of the premises with cattle or bison.

"Herd Plan" means a herd management and testing plan designed by a state or federal regulatory veterinarian and the herd owner that will control and eventually eradicate bovine tuberculosis from an affected, adjacent, or exposed herd.

"Modified Accredited Advanced State" means a state that is actively participating in the eradication of bovine tuberculosis and that maintains its status in accordance with the provisions of the USDA Uniform Methods and Rules for Bovine Tuberculosis Eradication.

"Modified Accredited State" means a state that is actively participating in the eradication of bovine tuberculosis and that maintains its status in accordance with the provisions of the USDA Uniform Methods and Rules for Bovine Tuberculosis Eradication.

"Natural Additions" means animals born and raised in a herd.

"Negative Animals" means any cattle, bison, or dairy goats that show no response to a tuberculin test or have been classified negative by the testing veterinarian following the application of the CCT test.

"No Gross Lesion (NGL) Animals" means any cattle, bison, or dairy goats that do not reveal a lesion of bovine tuberculosis upon postmortem inspection. Any animal with skin lesions alone shall be considered a NGL animal.

"Non-modified Accredited State" means a state that has not received accredited free status or modified accredited state status.

~~**"Official Ear Tag"** means an identification ear tag approved by USDA that provides tamper resistant and unique identification for each individual animal. An official ear tag may conform to the alpha numeric national uniform ear tagging system or be an approved RFID tag.~~

"Official Tuberculin Test" means a test for tuberculosis applied and reported by approved personnel in accordance with this Subchapter and the USDA Uniform Methods and Rules for bovine tuberculosis eradication. The official tuberculin tests are the caudal fold test, the comparative cervical test, the single cervical test or any other test that is approved by the United States Department of Agriculture (USDA).

"Passed Herd" means a herd in which no animals were classified as reactors or suspects as the result of a herd test of all test eligible animals.

"Permit" means an official document issued by an authorized agent of the Board of Agriculture, a representative of APHIS VS or an accredited veterinarian that is required to accompany any reactor, suspect, or exposed animals to slaughter. The permit lists the reactor tag or, in the case of suspect animals, an official eartag number; the owner's name and address; origin and destination locations; number of animals covered and the purpose of the movement. If a change in destination becomes necessary, a new permit ~~must~~shall be issued by authorized personnel. No diversion from the destination on the permit is allowed.

~~**"Quarantine"** means a written notice or order issued by an authorized agent of the State Board of Agriculture showing the boundaries of the area or premise affected, the animals restricted, and conditions, if any. No livestock held under quarantine may be moved or released without a written permit or quarantine release signed by an authorized agent.~~

"Reactor" means any cattle, bison, or goat that shows a response to a tuberculin test and is classified a reactor by the testing veterinarian, or any animal that may be classified as a reactor by the designated Epidemiologist based on supplemental diagnostic tests results from approved laboratories or other information.

"Routine Screening Tuberculin Test" means a caudal fold tuberculin test, or any other test ~~which~~that may be approved by the USDA, conducted as part of an area eradication program in which all responding animals are reported without classification to the State Veterinarian.

"Single Cervical Tuberculin Test" means the intradermal injection of 0.1 milliliters USDA bovine single cervical PPD tuberculin in the cervical (neck) region with reading by visual observation and palpation in seventy-two (72) hours (+ or - 6 hours) following injection.

"Suspect" means any cattle, bison, or goats that show a response to the caudal fold tuberculin test and are not classified as reactors, and cattle, bison, or goats that are classified suspects by a comparative cervical test.

"Tuberculin" means a product that is approved by and produced under USDA license for injection into cattle, bison, or goats for the purpose of detecting bovine tuberculosis.

SUBCHAPTER 42. TUBERCULOSIS ERADICATION IN CERVIDAE

PART 1. DEFINITIONS

35:15-42-1. Definitions

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

"Accredited Herd (Cervidae)" means a herd that has passed three (3) or more consecutive negative official tuberculosis tests of all eligible animals conducted at not less than nine (9)~~,~~ nor more than fifteen (15) month intervals, has no evidence of bovine tuberculosis and meets the standards of this Subchapter.

~~**"Accredited Veterinarian"** means a veterinarian licensed by the Oklahoma Board of Veterinary Medical Examiners and approved by the Deputy Administrator of APHIS to perform functions required for cooperative State/Federal animal disease control and eradication programs.~~

"Adjacent Herd" means a group or groups of cervids, cattle, bison, or dairy goats sharing common pasture, or having other direct contact with the affected herd, and herds containing previous purchases from or exchanges with the affected herd. Herds separated by a single fence are considered contact or adjacent herds.

"Affected Herd" means a herd of cervids that contains, or has recently contained, one (1) or more animals infected with Mycobacterium bovis, and that has not passed the required tests necessary for release from quarantine.

"Annual Tests" means those tests conducted at intervals of not less than ten (10) months nor more than fourteen (14) months.

"Approved Laboratory" means a state, federal, or other USDA approved veterinary diagnostic laboratory. The primary laboratory for tuberculosis histopathology and bacteriology culture shall be the National Veterinary Services Laboratories (NVSL), Ames, IA. Food Safety and Inspection Service (FSIS) field service laboratories may be utilized for histopathology.

"Area Veterinarian In Charge (AVIC)" means the veterinary official of Veterinary Services (VS), APHIS, USDA, who is assigned by the Deputy Administrator to supervise and perform official APHIS animal health work.

"Blood Tuberculosis (BTB) Test" means a supplemental test for bovine tuberculosis in Cervidae. The BTB test may be used at the owner's expense as a supplemental test to establish the disease status of a herd. Samples for this test shall be collected only by state, federal, or accredited veterinarians.

~~**"Certificate"** means an official document issued by a state or federal representative or an accredited veterinarian at the point of origin of a shipment of cervids. It shall include the official eartag number of each animal, the number of animals covered by the document, the purpose for which the animals are to be moved, the points of origin and destination, the complete name and address of the consignor, and the complete name and address of the consignee.~~

"Cervidae" means all species of deer, elk and moose raised under confinement and/or agricultural conditions for the production of meat, the production of other agricultural products, sport or exhibition.

"Comparative Cervical Tuberculin (CCT) Test" means the intradermal injection of biologically balanced bovine purified protein derivative (PPD) tuberculin and an avian PPD tuberculin at separate sites in the midcervical area and a determination as to the probable presence of bovine tuberculosis (Mycobacterium bovis) by comparing the responses of the two (2) tuberculins seventy-two (72) hours (+ or - 6 hours) following injection. This test shall be administered only by a full-time state or federal regulatory veterinarian.

"Designated Accredited Veterinarian" means an accredited veterinarian trained and approved by state ~~and/~~or federal representatives to conduct the single cervical test for tuberculosis on cervids.

~~**"Designated Epidemiologist"** means an experienced epidemiologist who has been designated to perform those functions necessary for the classification of cervids based on the evaluation of test, culture and histopathology results and consideration of the animal and herd history as well as other epidemiologic factors. The selection of the designated epidemiologist shall be made jointly by the AVIC and the State Veterinarian. Deviations from the reactor criteria in this Subchapter are acceptable when made by the designated epidemiologist.~~

"Direct Shipment to Slaughter" means the shipment of tuberculosis reactors, tuberculosis suspects, and tuberculosis exposed cervids from the premises of origin by permit directly to a slaughter establishment operating under state or federal inspection without diversion to assembly points of any type.

"Exposed Animals" means Cervidae that have associated with or been in direct contact with animals known to be tuberculous.

"Herd" means ~~a group of~~one or more cervids, or a group of cervids and other hoofed stock, maintained on common ground or two (2) or more groups of cervids and other hoofed stock under common ownership or supervision that are geographically separated but can have an interchange or movement without regard to health status. ~~(A group is construed to mean one (1) or more animals.)~~

"Herd Depopulation" means the removal of all Cervidae exposed to bovine tuberculosis in a herd directly to slaughter prior to any restocking of the premises with cervids.

"Herd Plan" means a herd management and testing agreement designed by a state or federal regulatory veterinarian and the herdowner that will control and eventually eradicate bovine tuberculosis from an affected, adjacent, or exposed herd of Cervidae.

"Monitored Herd" means a herd raised under range conditions on which identification records are maintained for animals over one (1) year of age that are slaughtered and inspected for tuberculosis at an approved state or federal slaughtering facility or an approved laboratory. The animals slaughtered ~~must~~shall be identified to the herd and the number slaughtered ~~must~~shall be evenly distributed over a three (3) year period at a rate to detect infection at a two percent (2%) prevalence level with ninety-five percent (95%) confidence. ~~The number of animals examined for a given herd size are listed in 35:15-42-52.~~

"Natural Additions" means animals born and raised in a herd.

"Negative Animals" means cervids that show no response to a tuberculosis test or have been classified negative by the testing veterinarian or designated epidemiologist based upon history, supplemental test, examination of carcasses or laboratory results.

"No Gross Lesion (NGL) Animals" means cervids that do not reveal one or more lesions of bovine tuberculosis upon postmortem examination.

~~**"Official Ear Tag"** means a metal identification eartag that provides unique identification for each individual animal by conforming to the nine (9) character alphanumeric national uniform eartagging system or any other unique identification device approved by the Oklahoma Board of Agriculture.~~

"Official Tuberculosis Test (Cervidae)" means a test for bovine tuberculosis applied and reported by approved personnel in accordance with this Subchapter. The official tests for

Cervidae are the single cervical test, the comparative cervical test, the blood tuberculosis test, and any other test ~~which~~that is approved by the United States Department of Agriculture (USDA).

"Permit" means an official document issued by an authorized agent of the Board of Agriculture, a representative of APHIS VS, or an accredited veterinarian that is required to accompany reactor, suspect, or exposed cervids to slaughter. The permit will list the reactor tag number, or in the case of suspect or exposed cervids, an official eartag number; the owner's name and address; origin and destination locations; number of cervids covered; and the purpose of the movement. If a change in destination becomes necessary, a new permit ~~must~~shall be issued by authorized personnel. No diversion from the destination on the permit is allowed.

"Qualified Herd" means a cervid herd that has undergone at least one (1) complete official negative test of all eligible animals within the previous twelve (12) months and is not classified as an accredited herd, has no evidence of bovine tuberculosis, and meets the standards of this Subchapter.

~~**"Quarantine"** means a written notice or order issued by an authorized agent of the Oklahoma Board of Agriculture showing the boundaries of the area or premise affected, the cervids restricted, and the conditions, if any. No cervids held under quarantine may be moved or released until a written permit or quarantine release signed by an authorized agent has been executed.~~

"Reactor" means any cervid that shows a response to an official tuberculosis test and is classified a reactor by the testing veterinarian or designated epidemiologist.

"Single Cervical Tuberculin (SCT) Test (Cervidae)" means the intradermal injection of 0.1 milliliters (5,000 tuberculin units) of USDA PPD bovis tuberculin in the midcervical region with reading by visual observation and palpation in seventy-two (72) hours (+ or - 6 hours) following injection. This test shall be administered only by a state, federal or designated accredited veterinarian.

"Suspect" means any cervid that shows a response to the single cervical tuberculin test and is not classified as a reactor; or is not classified as negative or a reactor by a supplemental tuberculosis test.

"Tuberculin" means a product that is approved by and produced under USDA license for the intradermal injection of cervids for the purpose of detecting bovine tuberculosis.

"Tuberculosis" means a disease in Cervidae caused by Mycobacterium bovis (M. bovis).

SUBCHAPTER 47. CHRONIC WASTING DISEASE (CWD) IN CERVIDAE

PART 1. GENERAL

35:15-47-2. Definitions

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

~~**"Accredited veterinarian"** means a veterinarian licensed by the Oklahoma Board of Veterinary Medical Examiners and approved by the Deputy Administrator of the United States Department of Agriculture (USDA) to perform functions required for state or cooperative state and federal animal disease control and eradication programs.~~

"Affected herd" means a herd of cervidae that contains or has contained one or more animals infected with chronic wasting disease.

"Cervidae" means, for the purposes of this Subchapter only, white-tail deer, black-tail deer, mule deer, red deer (European elk), and elk but does not include members of the cervidae family that are not susceptible to CWD.

"Herd" means one or more cervidae maintained on common ground and includes all cervidae under single or multiple ownership or supervision that are geographically separated but can have an interchange of cervidae between the groups.

"Herd plan" means a herd management and testing agreement developed by state and federal animal health officials in conjunction with the herd owner. A herd plan shall be valid only upon approval by the State Veterinarian.

~~**"Official ear tag"** means a metal ear tag that provides unique identification for each animal by conforming to the national uniform nine (9) character alphanumeric ear tag system.~~

"Suspect animal" means a cervid that displays clinical signs suggestive of CWD, including but not limited to, weight loss, poor condition, drooling, behavioral abnormalities, incoordination, weakness, or recumbency.

[OAR Docket #06-1078; filed 5-25-06]

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

[OAR Docket #06-1079]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Livestock Dealers and Livestock Special Sales
Part 3. Livestock Special Sales
35:15-9-7. through 35:15-9-11. [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agriculture Code; 2 O.S. 2001 §§ 2-4(2), (7), and (29), 9-141 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules incorporate the statutory requirement that a permit be obtained prior to holding a swine special sale into rules. In addition, the proposed rules provide clean up of the existing swine special sales permit requirements.
CONTACT PERSON:
Dr. Becky Brewer-Walker, Director, Animal Industry Services, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-6134

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 9. LIVESTOCK DEALERS AND LIVESTOCK SPECIAL SALES

PART 3. LIVESTOCK SPECIAL SALES

35:15-9-7. Application

(a) Any person shall obtain a permit prior to conducting a livestock special sale from the Department.
(b) Each application for a ~~"~~Livestock Special Sale~~"~~permit shall include:
(1) Name and address of person requesting permit;
(2) Location of sale premises;
(3) Date and time of sale; and
(4) Signature, complete address, and telephone number of person requesting the permit.

35:15-9-8. Written records

Each permit holder ~~must~~shall keep ~~the following~~ written records ~~or any other written records~~ for not less than twenty-four (24) months ~~which~~after the sale that are necessary and adequate to determine the sources and disposition of livestock ~~that are~~ sold at the sale, and shall at a minimum include the following:
(1) Accounts of sales;
(2) Accounts of purchases;
(3) Bills and invoices to ~~buyers~~purchasers;
(4) Cancelled checks and drafts;
(5) Check stubs;
(6) Scale tickets;
(7) Documents certifying the health status of animals presented by consignors;~~, and~~
(8) Records identifying each purchaser at the sale, including the name, mailing address, telephone number, and drivers license number of the purchaser or, if a minor, the representative of the purchaser; and
(~~8~~9) All other written correspondence pertaining to livestock advertised or sold in the sale.

35:15-9-9. Submission of record sales

The ~~person responsible for a sale~~permit holder shall submit to the Board within fifteen (15) days after the sale a record identifying and showing the sex and breed of each animal consigned from out-of-state ~~which was~~ purchased by an Oklahoma buyer, ~~along with~~ the name ~~and~~, mailing address, telephone number, and drivers license number of the consignor or representative, and the name ~~and~~, mailing address, telephone number, and drivers license number of the purchaser or, if a minor, the representative of the purchaser.

35:15-9-10. Records available for inspection

All records of a ~~"~~livestock special sales~~"~~ ~~must~~shall be available for inspection by an authorized agent of the Board during normal working hours.

35:15-9-11. Swine Special Sales

(a) If swine from Class I, Class II, or Class III states ~~will be~~are allowed to attend a sale, the fee for the Swine Special Sale Permit shall be Three Hundred Dollars ($300.00).
(b) If only swine from Class IV or Class V states ~~will be~~are allowed to attend a sale, no fee shall be required for the Swine Special Sale Permit.

[OAR Docket #06-1079; filed 5-25-06]

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

[OAR Docket #06-1084]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 11. Importation of Livestock, Poultry, and Pets
Part 7. Livestock
35:15-11-18. [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agriculture Code; 2 O.S. 2001 §§ 2-4(2), (7), and (29), 6-2, and 6-291; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
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N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule makes the cervidae import requirements consistent with the emergency rules approved earlier this year for Chronic Wasting Disease. The emergency rule is also proposed as a permanent rulemaking in a separate Notice of Rulemaking Intent. That rule updated time periods and requirements for cervidae herd certifications that are more in line with surrounding states' requirements.
CONTACT PERSON:
Dr. Becky Brewer-Walker, Director, Animal Industry Services, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-6134

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 11. IMPORTATION OF LIVESTOCK, POULTRY, AND PETS

PART 7. LIVESTOCK

35:15-11-18. Requirements for cervidae

(a) All persons importing cervidae shall obtain a permit issued by the Department for a period of thirty (30) days prior to entry and meet the following requirements:

(1) ~~Have~~Obtain a certificate of veterinary inspection issued by an accredited veterinarian within thirty (30) days prior to entry for all cervidae~~. The certificate of veterinary inspection shall contain~~ containing the following information:

(A) Permit numbers of all permits required for entry.

(B) A recordation of the method of identification for each cervid, including an official ear tag or any other visible, permanent identification device approved by the State Board of Agriculture ~~(Board)~~.

(2) ~~Have~~Obtain two (2) negative USDA-approved official tests for tuberculosis conducted no less than ninety (90) days apart for all cervidae six (6) months of age or older~~. The~~ and the second test ~~must~~shall be conducted within ninety (90) days prior to entry~~. Cervidae from Accredited Tuberculosis Free Herds are exempt from this requirement provided each cervid is individually identified and the Accredited Tuberculosis Free Herd number and permit number are recorded on the certificate of veterinary inspection. Cervidae from Qualified Tuberculosis Free Herds are exempt from this requirement provided each cervid is individually identified, the cervidae are accompanied by a certificate stating that the animals originated from a Qualified Herd, and each cervid six (6) months of age or older has passed one (1) USDA approved official test for tuberculosis that was conducted within ninety (90) days prior to entry.~~

(A) Cervidae from Accredited Tuberculosis Free Herds are exempt from this requirement provided each cervid is individually identified and the Accredited Tuberculosis Free Herd number and permit number are recorded on the certificate of veterinary inspection.

(B) Cervidae from Qualified Tuberculosis Free Herds are exempt from this requirement provided each cervid is individually identified, the cervidae are accompanied by a certificate stating that the animal originated from a Qualified Herd, and each cervid six (6) months of age or older has passed one (1) USDA approved official test for tuberculosis that was conducted within ninety (90) days prior to entry.

(3) ~~Have~~Obtain a negative test for brucellosis within thirty (30) days prior to entry for all cervidae six (6) months of age or older~~. Cervidae~~ except that cervidae from Certified Brucellosis Free Herds are exempt from this requirement provided each cervid is individually identified and the Certified Brucellosis Free Herd number and permit number are recorded on the certificate of veterinary inspection.

(4) Have a Commercial or Non-Commercial Breeders license issued by the appropriate agency in Oklahoma if importing white-tail deer, black-tail deer, mule deer, red deer (European elk), or elk into Oklahoma.

(b) A person shall not import white-tail deer, black-tail deer, mule deer, red deer (European elk), or elk into the state of Oklahoma if the state of origin at the time of importation has any free-ranging cervidae infected with chronic wasting disease (CWD). The State Veterinarian may grant an exemption from this requirement but only under quarantine restrictions.

(c) A person shall not import white-tail deer, black-tail deer, mule deer, red deer (European elk), or elk into the state of Oklahoma unless the herd of origin has participated ~~since January 1, 2002,~~for a minimum of five (5) years in a state or federal CWD herd certification program that imposes response measures for positive and trace herds at least equal to the Oklahoma requirements ~~described in Subchapter 47 of Title 35 of the Oklahoma Administrative Code.~~except in the following circumstances:

(1) The herd of origin was enrolled in an equivalent state or federal CWD monitoring program prior to July 1, 2002;

(2) The herd of origin was enrolled in an equivalent state or federal CWD monitoring program for a minimum of three (3) years prior to July 1, 2006; or

(3) The herd of origin was enrolled in an equivalent state or federal CWD monitoring program for a minimum of four (4) years prior to July 1, 2007.

(d) Any person importing cervidae to an approved slaughter facility operated pursuant to state or federal inspection is

exempt from ~~(a) (2), (a) (3), (b), and (c)~~the provisions of this section, ~~as~~so long as the cervidae are transported directly to the slaughter facility without any diversions.

(e) Any person importing cervidae of rare or endangered species, as identified and mutually agreed upon by the Board and the zoos within Oklahoma that are accredited by the American Association of Zoological Parks and Aquariums (AAZPA), is exempt from ~~requirements (a) (2), (a) (3), (b), and (c)~~the provisions of this section if the cervidae are shipped directly between AAZPA-accredited zoos and no commingling with other animals occurs during transit. A list of rare or endangered species of cervidae, for purposes of this exemption, ~~will be~~is maintained by the Board.

(f) The State Veterinarian may issue a special importation permit with individualized requirements for importing cervidae.

[OAR Docket #06-1084; filed 5-25-06]

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

[OAR Docket #06-1080]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 15. Equine Infectious Anemia (EIA)
Part 1. General Provisions
35:15-15-4. [AMENDED]
Part 3. Procedures
35:15-15-33. [AMENDED]
35:15-15-38. [AMENDED]
35:15-15-41. [AMENDED]
Subchapter 16. Contagious Equine Metritis
35:15-16-1. [NEW]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agriculture Code; 2 O.S. 2001 §§ 2-4(2), (7), and (29), 6-2; 6-281 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
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SUPERSEDED EMERGENCY ACTIONS:
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ANALYSIS:
The proposed rules amend the Equine Infectious Anemia rules to allow the use of electronic EIA forms and to clarify and clean up the Department's authority in protecting the Oklahoma horse population. In addition, the proposed rules provide for protection of equine animal health through the regulation of Contagious Equine Metritis by bringing the state requirements into line with the federal requirements.
CONTACT PERSON:
Dr. Becky Brewer-Walker, Director, Animal Industry Services, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-6134

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 15. EQUINE INFECTIOUS ANEMIA (EIA)

PART 1. GENERAL PROVISIONS

35:15-15-4. Definitions

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

~~**"Accredited veterinarian"** means a veterinarian licensed by the Oklahoma Board of Veterinary Medical Examiners and approved by the Deputy Administrator of the United States Department of Agriculture (USDA) to perform functions required for state or cooperative state and federal animal disease control and eradication programs.~~

"Adjacent herds" means a group or groups of Equidae sharing common pasture or having any direct contact with an affected herd or positive animal and includes any herd containing an animal purchased from or exchanged with the affected herd. Herds separated by a distance of less than two hundred (200) yards are adjacent herds.

"Affected herd" means a herd of Equidae that contains or has contained one or more animals infected with equine infectious anemia and that has not passed all tests required for release from quarantine.

"Approved laboratory" means a laboratory approved prior to operating by the State Veterinarian and the Federal Area Veterinarian In Charge to conduct an official test for equine infectious anemia.

"Approved market" means a stockyard, livestock market, or other premises approved by the Board, where horses or other Equidae are assembled for sale purposes.

~~**"Certificate"** means an official document issued by an accredited veterinarian at the point of origin of a shipment of Equidae and includes the name, breed, any registration number, any tattoo, any brand, sex, age, color, and markings sufficient to positively identify each Equidae listed on the form. It shall also include a record of a physical examination of each animal verifying freedom from visible evidence of any contagious, infectious, or communicable diseases and the results of an official test for equine infectious anemia, including the name of~~

~~the approved laboratory, the case number, and the date of the most recent test results.~~

"Certified copy" means a photocopy or an approved electronic copy of an original VS 10-11 Equine Infectious Anemia Laboratory Test which is stamped or sealed and signed by an authorized official of a state agency, commission, or board approved by the State Veterinarian.

~~**"Designated epidemiologist"** means an epidemiologist who has been designated to perform those functions necessary for the classification of Equidae, based on the evaluation of test results and consideration of the animal and herd history as well as other epidemiologic factors. The selection of the designated epidemiologist shall be made by the State Veterinarian.~~

"Direct shipment to slaughter" means the shipment of equine infectious anemia positive or exposed Equidae from the premises of origin or a quarantined holding facility to a slaughter establishment operated under state or federal inspection without diversion of any type.

"Equidae" means a family of perissodactyl ungulate mammals containing a single genus Equus, which includes but is not limited to horses, asses, jacks, jennies, hennies, mules, donkeys, burros, ponies, and zebras.

"Equine infectious anemia (EIA)" means a blood borne viral infection of Equidae.

"Exposed animals" means Equidae that have been in contact with, associated with, or adjacent to animals known to be equine infectious anemia positive. Untested animals sold for slaughter at approved markets shall be considered exposed.

"Herd" means one or more Equidae maintained on common ground and includes all Equidae under single or multiple ownership or supervision that are geographically separated but can have an interchange or movement without regard to health status.

"Herd plan" means a herd management and testing agreement designed by a state or federal veterinarian and a herd owner to control and eradicate equine infectious anemia from an affected, adjacent, or exposed herd of Equidae.

"Livestock dealer" means any person engaged in the business of buying or selling Equidae in commerce or any person registered and bonded under the provisions of the Federal Packers and Stockyards Act of 1921, as amended, who buys Equidae. The term livestock dealer shall not include a farmer or rancher who buys or sells Equidae in the ordinary course of their farming or ranching operation, unless they are registered and bonded under the Federal Packers and Stockyards Act of 1921, as amended.

"Market veterinarian" means any accredited veterinarian who has entered into a written agreement to work a specified market.

"Negative animals" means Equidae that show a negative response to an official test for equine infectious anemia or have been classified negative by the designated epidemiologist, based on history, supplemental tests, or other epidemiological evidence.

"Official Equine Passport" or **"Equine Interstate Event Permit"** means an approved document issued by an accredited veterinarian at the point of origin of a shipment of equine originating in a state with an equine passport agreement or equine interstate event permit agreement.

"Official in charge" means any manager, superintendent, secretary, or other person responsible for an equine exhibition.

"Official test" means the agar gel immunodiffusion (AGID) or "Coggins" test, the ~~competitive~~ enzyme-linked immunosorbent assay ~~(CELISA)~~(ELISA) test, ~~the synthetic antigen enzyme linked immunosorbent assay (SA ELISA) test, any USDA licensed tests,~~ or any other diagnostic test approved by the State Veterinarian.

"Oklahoma Certified EIA Laboratory" means any approved laboratory that has passed additional proficiency tests administered by the Board.

"Owner" means any person with the legal right of possession or having control over any Equidae, and shall include but not be limited to agents, caretakers, and other persons acting on behalf of that person.

"Permit" means an official document that shall accompany positive or exposed Equidae to a quarantined holding facility, an approved slaughter establishment, or approved quarantined premise. The permit shall be issued by the Board, a representative of USDA, or an accredited veterinarian. The permit shall list the name, breed, any registration number, any tattoo, any brand, sex, age, color, and markings sufficient to positively identify each Equidae listed on the form and shall also include the owner's name and address, origin and destination locations, and the purpose of the movement.

"Positive" means any Equidae which discloses a positive reaction to an official test for equine infectious anemia.

~~**"Quarantine"** means a written notice or order issued by an authorized agent of the Board showing the boundaries of the area or premise affected, the Equidae restricted, and any conditions.~~

"Quarantined holding facility" means a quarantined premise approved by the Board to handle positive or exposed Equidae for a period of not more than thirty (30) days prior to direct shipment to an approved slaughter establishment.

"State or federal veterinarian" means any veterinarian employed by a state or federal regulatory agency.

"Test eligible" means all Equidae other than foals less than six (6) months of age accompanied by their negative tested dam.

"VS Form 10-11" means the official USDA Equine Infectious Anemia Laboratory Test form labeled VS Form 10-11 or an approved electronic version.

PART 3. PROCEDURES

35:15-15-33. Submission of sample and test charts

(a) All blood samples submitted for official tests shall be accompanied by a properly completed VS Form 10-11 Equine Infectious Anemia Laboratory Test listing the following:

(1) Description of the Equidae, including the age, breed, color, sex, animal's name, any registration number, all distinctive markings, including color patterns, brands, tattoos, scars, or blemishes. In the absence of any distinctive color markings or visible permanent identifications,

the Equidae shall be identified by indicating the location of all hair whorls, vortices, or cowlicks with an "X" on the illustration provided on the VS Form 10-11.

(2) Owner's name ~~and~~, address, and telephone number.

(3) The animal's home premise and county.

(4) The name ~~and~~, address, and telephone number of the authorized person collecting the test sample.

(5) The laboratory and the person conducting the test.

(b) All blood samples shall be submitted in approved tubes and the tubes shall be identified with the same animal name, registration number, tattoo, or other identification as recorded on the VS Form 10-11.

(c) Samples submitted without proper identification and proper test charts shall not be classified.

(d) Authorized personnel shall use only one chart or VS Form 10-11 for each Equidae to be tested.

35:15-15-38. Identification of positive Equidae

(a) Any Equidae with a positive result to an official test for EIA shall be permanently identified by branding with a "73A" on the left shoulder no more than thirty (30) days after the date of the official test.

(b) The brand shall be clearly visible and permanently applied by an authorized agent of the Board using a hot iron brand or freeze brand marking no less than two (2) inches high.

(c) Any Equidae destroyed prior to branding shall be described in a written statement by the accredited veterinarian or authorized agent certifying the destruction.

(d) The certification shall be submitted to the State Veterinarian's office within ten (10) days of the date the animal is destroyed.

(e) It shall be a violation of these rules for any person to conceal, alter, or remove the "73A" brand on any positive animal.

35:15-15-41. Testing in exposed, contact, and adjacent herds

(a) All test eligible Equidae epidemiologically determined to have been exposed to an EIA positive animal shall be quarantined and tested by a state or federal veterinarian, an accredited veterinarian, or an authorized agent of the Board.

(b) All test eligible exposed, contact, or adjacent herds shall be tested within thirty (30) days of notification.

(c) A second test shall be conducted not less than sixty (60) days nor more than one hundred twenty (120) days following the removal of the last positive animal from the affected herd.

(d) Exposed, contact, or adjacent herds tested by state or federal veterinarians shall be tested at state expense so long as funds are available.

(e) Exposed, contact, or adjacent herds tested by accredited veterinarians shall be tested at the owner's expense.

(f) Epidemiologic data may be considered in the testing requirements and release of quarantine for exposed, contact, and adjacent herds.

(g) Any owner who chooses to maintain an EIA positive animal shall adhere to the following requirements:

(1) Brand and isolate the EIA positive animal in accordance with the provisions of this subchapter;

(2) Test each Equidae under common ownership or present on the property annually at the owner's expense;

(3) Submit an annual inventory of all Equidae under common ownership or present on the property to the Department by June 30 of each year; and

(4) Test any Equidae thirty (30) days prior to any sale or movement of any Equidae under common ownership or present on the property.

SUBCHAPTER 16. CONTAGIOUS EQUINE METRITIS

35:15-16-1. Incorporation by reference

(a) The contagious equine metritis regulation found in Title 9 of the Code of Federal Regulations (CFR) (2005 Revision), Section 93-301 for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, is hereby adopted in its entirety.

(b) All words and terms defined or used in the federal regulation incorporated by reference by the Department shall mean the state equivalent or counterpart to those words or terms.

[OAR Docket #06-1080; filed 5-25-06]

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

[OAR Docket #06-1081]

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PERMANENT final adoption

RULES:
Subchapter 22. Swine Pseudorabies
Part 1. General Provisions
35:15-22-1. through 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
Part 1. General Provisions
35:15-24-2. Through 35:15-24-3. [AMENDED]

AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agriculture Code; 2 O.S. 2001 §§ 2-4(2), (7), and (29), 6-281 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma

DATES:
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SUPERSEDED EMERGENCY ACTIONS:
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ANALYSIS:
The proposed rules amend the swine pseudorabies and brucellosis rules to reflect several terminology changes, incorporate federal regulations into the state programs, and protect swine health.
CONTACT PERSON:
Dr. Becky Brewer-Walker, Director, Animal Industry Services, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-6134

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 22. SWINE PSEUDORABIES

PART 1. GENERAL PROVISIONS

35:15-22-1. Definitions

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

~~**"Accredited veterinarian"** means a veterinarian licensed by the Oklahoma Board of Veterinary Medical Examiners and approved by the Deputy Administrator of the United States Department of Agriculture ("USDA") to perform functions required for state or cooperative state and federal animal disease control and eradication programs.~~

"Approved market" means a stockyard, livestock market, or other premises approved by the ~~State~~ Board ~~of Agriculture ("Board")~~ where swine are assembled for sale.

"Approved slaughtering establishment" means a slaughtering establishment operated under the provisions of the Federal Meat Inspection Act (21 U.S.C. § 601 et seq.), a state-inspected slaughtering establishment, or any other facility approved by the Board.

"Breeding swine" means all sexually intact swine six (6) months of age or older ~~being kept for reproduction. An~~as determined by an accredited veterinarian ~~shall determine the age of the swine~~.

~~**"Certificate of veterinary inspection"** means an official document issued by an accredited veterinarian at the point of origin of a shipment of swine. It shall include the name and address of the consignor; the name and address of the consignee; the entry permit number, if applicable; the age, sex, number, and breed of the swine; sufficient identifying marks or tags to positively identify each pig; and the results of all required tests. It shall also include a record of a physical examination of the swine verifying that each pig is free from visible evidence of any contagious, infectious, or communicable diseases and that the swine do not originate from an area of quarantine, infestation, or infection. A certificate of veterinary inspection is valid for thirty (30) days after the date of issuance.~~

"Commercial production swine" means swine that are continuously managed and have adequate facilities and practices to prevent exposure to either transitional production or feral swine.

"Commuter herd" means two or more groups of swine under common ownership or supervision that are located on more than one premise in more than one state and that have an interchange or movement of swine between the premises in those states as part of the normal feeding, breeding, or growing operation without a change of ownership. ~~A commuter herd agreement shall be completed and approved prior to any interchange or movement of swine between the states.~~

"Commuter herd agreement" means a written herd management and testing agreement made by the chief animal health officials of all states where the commuter herd resides and the herd owner. ~~A commuter herd agreement shall be completed and approved prior to any interchange or movement of swine between the states.~~

~~**"Designated epidemiologist"** means an epidemiologist who has been designated to perform those functions necessary for the classification of livestock suspected to be infected with pseudorabies, based on an evaluation of test results and consideration of the animal and herd history, as well as other epidemiological factors. The State Veterinarian shall select the designated epidemiologist.~~

"Direct consignment" means the shipment of swine from the point of origin to the destination point without diversion of any type, unloading the swine enroute, or permitting contact any with other animals, including other swine.

"Entry permit" means official permission from the State Veterinarian obtained prior to moving swine into Oklahoma~~. An entry permit shall~~ valid for thirty (30) days after the date of issuance that may be obtained by telephone by providing the ~~State Veterinarian the~~ following information: name and address of the consignor; name and address of the consignee; and the number, age, sex, and breed of the swine to be imported. ~~An entry permit may be obtained by telephone and is valid for thirty (30) days after the date of issuance.~~

"Exposed swine" means swine that have been in contact with, associated with, or adjacent to any animal known to be pseudorabies positive.

"Farm of origin" means the farm where the swine were born or where the swine have resided for at least the previous ninety (90) consecutive days.

"Feeder swine" means swine intended to be fed to a finished slaughter weight and not intended for breeding or exhibition.

"Feral swine" ~~or~~ ~~**"wild swine"**~~ means swine that are free roaming or wild.

"Herd" means one or more swine maintained on common ground and includes all swine under common ownership or supervision that are geographically separated but have an interchange or movement of swine between the groups.

~~**"Identification device"** means a permanent ear tag or other method approved by the Oklahoma Department of Agriculture, Food, and Forestry ("Department") that provides unique identification for each animal.~~

"Infected ~~livestock~~herd" means ~~any livestock~~a herd in which an animal has been determined by the designated epidemiologist to be infected with pseudorabies using an official pseudorabies test or diagnosed as having pseudorabies by an accredited veterinarian.

"Isolation" means separation of swine by a physical barrier ~~in such a manner~~so that other swine do not have access to the isolated swine's body, excrement, or discharges~~. Swine kept in isolation shall~~ and the swine do not share a building with a common ventilation system with other swine and ~~shall be~~are kept at a distance ~~to be~~from other swine as determined by the designated epidemiologist ~~from other swine~~.

~~**"Known infected herd"** means a herd in which an animal has been determined by the designated epidemiologist to be infected with pseudorabies using an official pseudorabies test or diagnosed as having pseudorabies by an accredited veterinarian. A herd of livestock, other than swine, shall no longer be classified as a known infected herd ten (10) days following the disposition of the last clinical case of pseudorabies in the herd.~~

"Official pseudorabies test" means a test approved by the USDA to be conducted on swine for the diagnosis of pseudorabies and performed in a laboratory ~~as~~ listed in a Veterinary Services Notice ~~listing such laboratories. The~~and shall not include the G-1 deletion test ~~is not approved by the Department as an official pseudorabies test for Oklahoma~~, except for use by the Oklahoma designated epidemiologist.

"Official 95/10 random sample test" means a sampling protocol utilizing official pseudorabies tests that provide a ninety-five (95) percent probability of detecting infection in a herd in which at least ten (10) percent of the swine are seropositive for pseudorabies. Each segregated group of swine ~~must~~shall be considered a separate herd and sampled as follows:

(A) less than 100 head - test 25
(B) 100-200 head - test 27
(C) 201 - 999 head - test 28
(D) 1,000 head and over - test 29.

"Owner-shipper statement" means a statement signed by the owner or shipper of swine which includes the number of swine to be moved~~;~~, the points of origin and destination~~;~~, the names of the consignor and consignee~~;~~, and any additional required information ~~required by this Subchapter~~.

"Pseudorabies" means the infectious and communicable disease of livestock and other animals also known as Aujeszky's disease, mad itch, or infectious bulbar paralysis.

"Pseudorabies monitored herd" means a swine herd that has negative test results from an official pseudorabies serologic test during the last twelve (12) months at the following rate:

(A) 10 head - test all
(B) 11-35 head - test 10
(C) 36 or more - test thirty (30) percent or thirty (30) swine, whichever is less.

"Quarantine feedlot" means a confined area under official state quarantine and approved by the State Veterinarian. ~~The quarantine feedlot shall be maintained for feeding of swine in dry lot with no provisions for pasturing or grazing. No breeding swine shall be allowed in a quarantine feedlot. No pregnant sows, bred gilts, or sows with pigs at side shall be eligible for placement in a quarantine feedlot. Boars shall not be maintained jointly with sows or gilts in the feedlot. All swine leaving a quarantine feedlot must go directly to an approved slaughter establishment, to another quarantine feedlot, or to an approved assembly point for sale to an approved slaughter establishment or quarantine feedlot. All movements of swine from a quarantine feedlot must be accompanied by an approved shipping permit issued by an accredited veterinarian or a state or federal animal health official. Records of the origin and disposition of all swine handled by the feedlot must be on file and maintained for a twenty-four (24) month period. These records must be available for inspection or copying by any state or federal animal health official during normal business hours.~~

~~**"Quarantined herd"** means a herd containing pseudorabies infected or exposed swine and quarantined by the State Veterinarian.~~

"Qualified pseudorabies negative herd" means a herd where all swine over six (6) months of age have been tested using an official pseudorabies test and all swine tested negative. The herd shall not have been a known infected herd within the past thirty (30) days. A minimum of ninety (90) percent of the swine in the herd shall have been on the premises and a part of the herd for at least ninety (90) days prior to the qualifying official pseudorabies tests or have entered directly from another qualified pseudorabies negative herd. All requirements in Part 5 of this Subchapter shall be met in order to maintain qualified pseudorabies negative status.

"Shipping Permit" means an official document issued by the State Veterinarian for the movement of pseudorabies infected, exposed, or vaccinated swine under this Subchapter. The permit shall be obtained prior to any movement of the swine and shall include the number of swine to be moved; the purpose for moving the swine; the points of origin and destination; the names and addresses of the consignor and the consignee; and any additional information required by this Subchapter.

"Slaughter swine" means swine intended for or consigned directly to a slaughter establishment.

~~**"State animal health official"** means the state animal health official, or designee, who is responsible for the livestock and poultry disease control and eradication programs in the state.~~

~~**"State Veterinarian"** means the person appointed by the Board pursuant to Title 2 Oklahoma Statutes, Section 6-1, or the State Veterinarian's designee.~~

"Transitional production swine" means feral swine that are captive or swine that have reasonable opportunities to be exposed to feral swine.

35:15-22-2. Import requirements for Stage IV and Stage V

(a) Certification for feedlots on premises where there are no breeding ~~animals~~swine shall show:

(1) The feedlot is included in a down-the-road herd-testing program, or

(2) The herd is monitored by slaughter or first-point surveillance of butcher hogs, or

(3) During the period since the last pseudorabies case in the state was cleaned up, the herd:

(A) Tested negative to an official random-sample test (95/10), or

(B) Underwent a 30-day depopulation with appropriate cleaning and disinfection.

(4) Any feedlots not tested pursuant to this subsection shall be operated all-in and all-out by premises.

(b) Vaccination is prohibited except by permission of the State Veterinarian in high-risk herds or as part of an approved herd-cleanup plan.

(c) Swine import requirements shall be as follows:

(1) Slaughter swine:

(A) Infected or exposed swine may only be shipped through or into the state with prior written approval from the State Veterinarian and shall move directly to a recognized slaughter establishment. The swine shall be accompanied by a shipping permit, conveyed in sealed vehicles, and unloaded under the supervision of State or Federal officials to ensure that biosecurity measures are observed.

(B) Imports of slaughter swine from a state with Stage III status or less are permitted to a recognized slaughter establishment or an approved slaughter market only.

(2) Breeding swine:

(A) Direct shipment from a Stage IV or V state, or

(B) Direct shipment from a qualified pseudorabies-negative herd in any State/Area, or

(C) Negative official pseudorabies serologic test within 30 days prior to shipment with quarantine, isolation, and retest at destination in 30-60 days following importation.

(3) Feeder pigs:

(A) Direct shipment from a farm of origin or a market in a Stage IV or V state, or

(B) Direct shipment from a farm of origin in a Stage III state, or

(C) Direct shipment from a qualified pseudorabies-negative herd or qualified-negative gene-altered vaccinated herd, or

(D) Entry from feeder-pig-monitored herds in Stage II states or from approved feeder-pig markets shall occur only pursuant to the following conditions:

(i) The swine enter on permit directly to a designated feedlot;

(ii) The swine are restricted to the designated feedlot until sent to slaughter.

PART 3. REQUIREMENTS FOR SWINE ENTERING OKLAHOMA

35:15-22-31. Entry requirements for commercial production breeding swine

(a) A person importing commercial production breeding swine into Oklahoma shall obtain an entry permit ~~by calling the Animal Industry Services Division of~~from the ~~Oklahoma~~ Department ~~of Agriculture, Food, and Forestry ("Department")~~.

(b) ~~Breeding~~Commercial production breeding swine entering Oklahoma shall be accompanied by a certificate of veterinary inspection~~,~~ containing the following information:

(1) the entry permit number;

(2) a statement from the issuing veterinarian that to the best of the veterinarian's knowledge pseudorabies has not existed in the herd of origin in the past six (6) months, the swine to be imported have not been vaccinated for pseudorabies, and if applicable, the swine to be imported are offspring of a pseudorabies vaccinated sow; and

(3) if applicable, the qualified pseudorabies herd number and date of last pseudorabies test.

(c) ~~Breeding~~Commercial production breeding swine that are offspring of a pseudorabies vaccinated sow shall be accompanied with an individual negative pseudorabies test using an official pseudorabies test for Oklahoma.

(d) ~~Breeding~~Commercial production breeding swine entering Oklahoma under a completed and approved commuter herd agreement pursuant to 35:15-22-35 are exempt from requirements (a) and (b) provided the swine are not changing ownership.

(e) ~~Breeding~~Commercial production breeding swine entering Oklahoma shall either

(1) be accompanied with a negative official pseudorabies test performed within thirty (30) days prior to entry,

(2) originate from a qualified pseudorabies negative herd,

(3) originate from a Class IV or V state, or

(4) enter under a completed and approved commuter herd agreement provided that the swine are accompanied by an owner-shipper statement.

(f) For purposes of requirements (e)(2) and (e)(3), all commercial production breeding swine that are commingled with other swine shall assume the lowest status of the commingled swine.

(g) After entry into Oklahoma, the owner of the imported commercial production breeding swine shall comply with one of the following requirements:

(1) quarantine the swine upon arrival, hold the swine in isolation, and at the owner's expense, not less than thirty (30) but not more than sixty (60) days after arrival, obtain a post-entry negative official pseudorabies test. The owner is responsible for notifying the Department that the post-entry test has been completed;

(2) add the swine to a qualified pseudorabies negative herd according to the requirements of 35:15-22-52; ~~or~~

(3) meet the commuter herd agreement requirements of 35:15-22-35~~.~~; or

(4) if importing from a Stage V state, test the swine pursuant to the requirements for a pseudorabies monitored herd.

35:15-22-32. Entry requirements for commercial production feeding swine

(a) A person importing commercial production feeding swine into Oklahoma shall obtain an entry permit ~~by calling the Animal Industry Services Division of~~from the Department.

(b) ~~Feeding~~Commercial production feeding swine entering Oklahoma shall be accompanied by a certificate of veterinary inspection, containing the following information:

(1) the entry permit number;

(2) a statement from the issuing veterinarian that to the best of the veterinarian's knowledge pseudorabies has not existed in the herd of origin in the past six (6) months, the swine to be imported have not been vaccinated for pseudorabies, and if applicable, the swine to be imported are offspring of a pseudorabies vaccinated sow; and

(3) if applicable, the qualified herd number and date of last pseudorabies test.

(c) ~~Feeding~~Commercial production feeding swine that are offspring of a pseudorabies vaccinated sow shall be accompanied with an individual negative pseudorabies test using an official pseudorabies test recognized by Oklahoma.

(d) ~~Feeding~~Commercial production feeding swine entering Oklahoma under a completed and approved commuter herd agreement pursuant to 35:15-22-35 are exempt from requirements (a) and (b) provided the swine are not changing ownership.

(e) ~~Feeding~~Commercial production feeding swine entering Oklahoma shall either:

(1) be accompanied with a negative official pseudorabies test performed within thirty (30) days prior to entry,

(2) originate from a qualified pseudorabies negative herd,

(3) originate from a Class III, IV, or V state,

(4) enter under a completed and approved commuter herd agreement provided that the swine are accompanied by an owner-shipper statement, or

(5) originate from a pseudorabies monitored herd.

(f) Swine from an infected or exposed herd shall not enter Oklahoma.

35:15-22-33. Entry requirements for transitional production exhibition and prospective exhibition swine

(a) A person importing transitional production exhibition or prospective exhibition swine into Oklahoma shall obtain an entry permit ~~by calling the Animal Industry Services Division of~~from the Department.

(b) ~~Exhibition~~Transitional production exhibition and prospective exhibition swine entering Oklahoma shall be accompanied by a certificate of veterinary inspection, containing the following information:

(1) the entry permit number,

(2) a statement from the issuing veterinarian that to the best of the veterinarian's knowledge pseudorabies has not existed in the herd of origin in the past six (6) months, the swine to be imported have not been vaccinated for pseudorabies, and if applicable, the swine to be imported are offspring of a pseudorabies vaccinated sow, and

(3) if applicable, the qualified herd number and date of last pseudorabies test.

(c) ~~Exhibition~~Transitional production exhibition and prospective exhibition swine that are offspring of a pseudorabies vaccinated sow shall be accompanied with an individual negative pseudorabies test using an official pseudorabies test recognized by Oklahoma.

(d) ~~Exhibition~~Transitional production exhibition and prospective exhibition swine entering Oklahoma shall either:

(1) be accompanied with a negative official pseudorabies test performed within thirty (30) days prior to entry, or

(2) originate from a qualified pseudorabies negative herd.

~~(e) After entry into Oklahoma, the owner of the imported exhibition or prospective exhibition swine shall quarantine the swine upon arrival, hold the swine in isolation, and at the owner's expense obtain, not less than thirty (30) but not more than sixty (60) days after arrival, a post-entry negative official pseudorabies test. The owner is responsible for notifying the Department that the post-entry test has been completed.~~

35:15-22-35. Commuter herd agreement requirements

(a) ~~Prior to becoming effective, a~~A written commuter herd agreement shall be ~~submitted for~~effective upon review and approval ~~to~~by the State Veterinarian.

(b) A written commuter herd agreement shall include the following:

(1) global positioning system (GPS) data for all premises covered by the agreement,

(2) the location of the premise of origin and destination for all swine imported into Oklahoma under the commuter herd agreement, and

(3) the acceptable surveillance and testing requirements as determined by the designated epidemiologist based on the status of the state of origin, history of the herd of origin, and the intended purpose of the swine entering Oklahoma.

(c) All pseudorabies testing ~~done~~performed pursuant to a commuter herd agreement shall utilize an official 95/10 random sample test.

(d) By the tenth (10th) of each month, the producer shall submit a monthly report of all swine entering Okalahoma.

(e) A commuter herd agreement shall be completed and approved prior to any interchange or movement of commuter herd swine between states.

PART 5. REQUIREMENTS FOR A QUALIFIED PSEUDORABIES NEGATIVE HERD

35:15-22-51. Qualified pseudorabies negative herds of swine

(a) A swine herd shall achieve qualified pseudorabies negative herd status by having an official negative pseudorabies test for all swine in the herd over six (6) months of age and in the number of progeny equal to twenty percent (20%) of the breeding population of the herd. Progeny shall be randomly selected from swine between four (4) and six (6) months of age.

(b) Each pig shall be permanently and individually identified and a complete herd inventory shall be submitted with each qualifying herd test that shall include, at a minimum, individual identification, age, breed, and sex. Identification of all additions shall be provided at each subsequent test.

(c) A minimum of ninety (90) percent of the swine in the herd shall have been on the premise and a part of the herd for at least ninety (90) days prior to the qualifying official pseudorabies test or have entered directly from another qualified pseudorabies negative herd.

(d) All additions to a qualified pseudorabies negative herd shall be made according to 35:15-22-52.

(e) Swine returned to the herd after contact with swine other than those from a single qualified pseudorabies negative herd shall be isolated until the swine have been found negative to an official pseudorabies test, performed not less than thirty (30) days but not more than sixty (60) days after the swine were placed in isolation.

(f) A past history of noncompliance by the owner may result in prevention of the herd's participation in the program.

35:15-22-53. Maintenance method for qualified pseudorabies negative

(a) Qualified pseudorabies negative herd status shall be maintained provided that twenty~~ five~~ percent ~~(25%)~~(20%) of the breeding swine ~~over~~ six (6) months of age or older and a number of progeny between four (4) to 6 (six) months of age equal to six percent (6%) of the breeding animals in the herd test negative every eighty (80) to one hundred five (105) days or provided that ~~ten~~seven percent ~~(10%)~~(7%) of the breeding swine ~~over~~ six (6) months of age or older and a number of progeny equal to two percent (2%) of the breeding animals in the herd test negative every month. All qualifying standards listed in 35:15-22-51 and 35:15-22-52 shall also be maintained.

(b) ~~No pig~~All adult swine shall be tested ~~twice in any one (1) year to comply with the twenty five percent (25%) testing requirement or tested twice in ten (10) months to comply with the ten percent (10%) testing requirement~~at least once in any twelve month period.

(c) If a qualified pseudorabies negative herd consists of breeding swine that are located on more than one premise or unit, each group shall be considered a separate herd for the percentage testing required to maintain qualified pseudorabies negative status.

(d) A complete inventory shall be submitted with the first quarterly herd test each calendar year that shall include, at a minimum, individual identification, age, breed, and sex.

(e) A past history of noncompliance by the owner may result in prevention of the herd's participation in the program.

PART 7. REQUIREMENTS FOR SWINE EXHIBITIONS

35:15-22-71. Exhibition requirements

(a) All Oklahoma origin swine shall have an ~~identification device permanently affixed to the right ear~~official ear tag and shall be accompanied with either a certificate of veterinary inspection or a copy of an official test chart for each exhibition. The certificate of veterinary inspection shall include either the negative results from an official pseudorabies test or the qualified pseudorabies negative herd number and current quarterly herd test date and show the corresponding ~~identification device~~official ear tag for each pig.

(b) All out-of-state swine shall have an ~~identification device permanently affixed to the right ear~~official ear tag and shall be accompanied with a certificate of veterinary inspection for each exhibition. The certificate of veterinary inspection shall include either the negative results from an official pseudorabies test or the qualified pseudorabies negative herd number and current quarterly herd test date and show the corresponding ~~identification device~~official ear tag for each pig.

(c) Testing requirements.

(1) ~~Oklahoma origin breeding swine shall have a negative official pseudorabies test within thirty (30) days prior to each exhibition.~~

~~(2)~~ Oklahoma origin ~~market~~exhibition swine shall have a negative official pseudorabies test after June 1 each year for fall exhibitions and after December 1 each year for spring exhibitions. These tests are valid for the entire respective exhibition season, unless in the opinion of the designated epidemiologist the swine have been exposed to pseudorabies.

(~~3~~2) Out of state swine shall have either a negative official pseudorabies test within thirty (30) days prior to each exhibition or shall have evidence that the swine are from a qualified pseudorabies negative herd and show the corresponding ~~identification device~~official ear tag for each pig.

(~~4~~3) Owners or immediate family members of owners of a qualified pseudorabies negative herd may exhibit swine originating from the qualified herd without a negative official pseudorabies test as long as the swine are accompanied with evidence of the herd status at each exhibition. This documentation shall include the corresponding ~~identification device~~official ear tag for each pig entered in the exhibition.

(d) All swine, after being exhibited, shall be kept isolated from all non-exhibition swine until the swine are retested negative for pseudorabies not less than thirty (30) days but not more than sixty (60) days following the exhibition unless the swine are consigned to a quarantined feedlot, an approved slaughter

establishment, or an approved market for sale to slaughter or to a quarantined feedlot.

PART 9. REQUIREMENTS FOR APPROVED MARKETS

35:15-22-91. Requirements for approved markets

(a) Feeder swine consigned to an approved livestock market shall have an ~~identification device~~official ear tag for each pig. The market operator shall maintain a record of all ~~identification devices~~official ear tags, the consignee's name and address, and the premise of origin.

(b) The livestock market shall immediately identify all out-of-state farm origin swine.

(c) The livestock market shall not release any out-of-state swine unless the appropriate entry requirements from Part 3 of this Subchapter have been met or the swine are to be shipped directly from the market to an approved slaughter facility.

(d) Upon release from a livestock market, out-of-state breeding swine shall be quarantined until, at the owner's expense, the swine are tested negative for pseudorabies not less than thirty (30) or more than sixty (60) days after the release. The owner is responsible for notifying the Department that the pseudorabies test has been completed.

(e) Out-of-state breeding swine released from a livestock market directly to an approved slaughter establishment or a quarantine feedlot are exempt from (d) of this section.

(f) Any market that is approved to handle out-of-state slaughter swine and is the final market for these swine prior to release directly to an approved slaughter facility shall keep the slaughter swine separate from any feeding or breeding swine. Any facilities or equipment used for the out-of-state slaughter swine, including but not limited too, scales, loading chutes, etc., shall be thoroughly cleaned prior to use for any feeding or breeding swine.

PART 11. PSEUDORABIES TESTING, VACCINE, AND QUARANTINE - PROCEDURES

35:15-22-113. Quarantine requirements~~ for vaccinated swine herds~~

(a) All swine herds in which a pseudorabies vaccine or other product to immunize or increase the resistance to pseudorabies has been used shall be quarantined.

(b) Unvaccinated swine in a herd that contains other swine that have been vaccinated may be released from quarantine upon meeting the following conditions:

(1) The unvaccinated swine have been isolated from all vaccinated swine for a minimum of thirty (30) days.

(2) ~~he~~The swine have tested negative to an initial official pseudorabies test following the thirty (30) day isolation period.

(3) The swine have tested negative to a second official pseudorabies test not less than thirty (30) days following the initial test.

(4) The State Veterinarian has approved the release and movement of the unvaccinated swine.

(c) The quarantine feedlot shall be maintained for feeding of swine in dry lot with no provisions for pasturing or grazing.

(1) No breeding swine, pregnant sows, bred gilts, or sows with pigs at side shall be allowed in a quarantine feedlot.

(2) Boars shall not be maintained jointly with sows or gilts in the feedlot.

(d) All swine leaving a quarantine feedlot shall go directly to an approved slaughter establishment, to another quarantine feedlot, or to an approved assembly point for sale to an approved slaughter establishment or quarantine feedlot.

(1) All movements of swine from a quarantine feedlot shall be accompanied by an approved shipping permit issued by an accredited veterinarian or a state or federal animal health official.

(2) Records of the origin and disposition of all swine handled by the feedlot shall be on file and maintained for a twenty-four (24) month period and these records shall be available for inspection or copying by any state or federal animal health official during normal business hours.

SUBCHAPTER 24. SWINE BRUCELLOSIS

PART 1. GENERAL PROVISIONS

35:15-24-2. Definitions

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

"Approved Laboratory" means a laboratory having State-Federal approval to conduct specific tests for Brucellosis and staffed with personnel approved to conduct such tests.

"Exposed Swine" means swine which have had contact with Brucellosis infected swine as determined by the Designated Epidemiologist.

"Herd Test" means a blood test for Brucellosis conducted on a group of breeding swine six (6) months of age and older and any additional animals in the group which the designated epidemiologist determines should be tested to help evaluate the potential of Brucellosis infection within the group. All swine tested shall be identified with an official eartag, tattoo or other permanent identification.

"Infected Herd" means a group of swine in which evidence of B. suis has been disclosed as is determined by the Designated Epidemiologist.

"Negative" means that no evidence of Brucellosis exists in an animal~~/animals~~ as determined by blood testing and classification by the Designated Epidemiologist.

~~**"Official Eartag"** means a metal device which attaches to the national uniform eartagging system.~~

"Official Sample" means a blood sample obtained by State-Federal personnel or an accredited veterinarian and submitted to an approved laboratory.

"Permit for Entry" means permission granted by the Board or its authorized agent to move swine into the state of Oklahoma. A permit shall contain the name and address of the consignor and consignee and the number, age, sex and breed of swine being imported. A permit shall be void 15 days after date of issuance.

"Reactor" means a response to testing which indicates Brucellosis infection in ~~animal/~~animals as determined by the Designated Epidemiologist.

35:15-24-3. Administrative

(a) **Entering premises.** Authorized agents of the Oklahoma Department of Agriculture shall be authorized to enter premises as required to meet the standards of the Swine Brucellosis Eradication Program.

(b) **Services to owners.** Services pertaining to Brucellosis eradication in affected or suspect herds shall be rendered to livestock owners as long as funds for such purposes are allocated.

(c) **Human infection.** All human cases of B. suis shall be reported to appropriate public health officials.

(d) **Exhibition requirements.** All ~~breeding~~Oklahoma origin swine ~~six (6) months of age and older~~ shall have an official ear tag and shall be ~~tested and found negative to~~ accompanied by either a certificate of veterinary inspection or a copy of an official test chart for each exhibition. The certificate of veterinary inspection shall include either the negative results from an official Brucellosis ~~within 30 days of being exhibited~~test or ~~originate from a~~the validated Brucellosis ~~Validated Free Herd~~ negative herd number and current quarterly herd test date and show the corresponding official ear tag for each pig.

(1) All swine from other than Oklahoma shall have an official ear tag and shall be accompanied with a certificate of veterinary inspection for each exhibition. The certificate of veterinary inspection shall include either the negative results from an official brucellosis test or the validated brucellosis negative herd number and current quarterly herd test date and show corresponding official ear tag for each pig.

(2) Oklahoma origin exhibition swine shall have a negative official brucellosis test after June 1 each year for fall exhibitions and after December 1 each year for spring exhibitions. These tests are valid for the entire respective exhibition season, unless in the opinion of the designated epidemiologist the swine have been exposed to brucellosis.

(3) Out of state swine shall have either a negative official brucellosis test within thirty (30) days prior to each exhibition or shall have evidence that the swine are from a validated brucellosis negative herd and current quarterly herd test date and show the corresponding official ear tag for each pig.

(4) Owners or immediate family members of owners of a validated brucellosis negative herd may exhibit swine originating from the validated herd without a negative official brucellosis test as long as the swine are accompanied with evidence of the herd status at each exhibition. This documentation shall include the corresponding official ear tag for each pig entered in the exhibition.

(5) All swine, after being exhibited, shall be kept isolated from all non-exhibition swine until the swine are retested negative for brucellosis not less than thirty (30) days but not more than sixty (60) days following the exhibition unless the swine are consigned to a quarantined feedlot, an approved slaughter establishment, or an approved market for sale to slaughter or to a quarantined feedlot.

(e) **Change of ownership requirements.** All breeding swine six (6) months of age and older shall be tested and found negative to Brucellosis within 30 days of changing ownership, or originate from a Brucellosis Validated Free Herd. Test eligible swine moving directly from a premise of origin to an approved slaughter facility, or through an approved market to an approved slaughter facility, are exempt from test requirements provided identity to the herd of origin is maintained.

(f) **Penalties.** The Oklahoma Board of Agriculture shall have the authority to impose penalties for any person~~/persons~~ found guilty of violating the provisions of this rule. The Administrative Procedures Act shall be utilized in determining such action.

[OAR Docket #06-1081; filed 5-25-06]

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

[OAR Docket #06-1083]

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PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Agriculture and the Oklahoma Agriculture Code; 2 O.S. 2001 §§ 2-4(2), (7), and (29), 6-2, and 6-291; Article 6, Section 31, Constitution of the State of Oklahoma
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Subchapter 47. Chronic Wasting Disease (CWD) in Cervidae
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35:15-47-6. [AMENDED]
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Gubernatorial approval:
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23 Ok Reg 105
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05-1273
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rule makes permanent the emergency rule approved earlier this year. That rule updated time periods and requirements for cervidae herd certifications that are more in line with surrounding states' requirements.
CONTACT PERSON:
Dr. Becky Brewer-Walker, Director, Animal Industry Services, Oklahoma Department of Agriculture, Food, and Forestry (405) 522-6134

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 47. CHRONIC WASTING DISEASE (CWD) IN CERVIDS

PART 3. HERD CERTIFICATION STANDARDS

35:15-47-6. Minimum requirements for herd certification

(a) Herd owners shall have perimeter fencing adequate to confine their cervidae and prevent access by other cervidae.

(b) Herd owners shall perform surveillance testing of all deaths occurring in cervidae over sixteen (16) months of age. The State Veterinarian may approve exemptions from this requirement on a case by case basis.

(c) Herd owners shall maintain the highest quality sampling for use in the surveillance testing. The State Veterinarian may adjust the surveillance levels and herd status if poor quality samples are routinely submitted from a premise.

(d) An accredited veterinarian or state or federal animal health official shall perform an annual verification of the herd inventory. The annual verification shall include~~ a comparison of all cervidae with the herd inventory and provide specific information on the disposition of each cervid not present and the origin of all herd additions since the last inventory verification. The herd inventory shall also include information on any cervidae subgroups within the herd and shall detail all management, including movement between subgroups, for the purpose of assessing risk to other cervidae on the premises in the event a CWD positive cervid is diagnosed.~~:

(1) A verification of the identity of all cervidae listed on the herd inventory;

(2) Specific information on the disposition of each cervid no longer with the herd;

(3) The origin of each herd addition since the last herd inventory;

(4) Information on any cervidae subgroups within the herd; and

(5) Detail of all management including movement between the subgroups for the purpose of assessing risk to other cervidae on the premises in the event a CWD positive cervid is diagnosed.

(e) Herd owners shall report all cervidae deaths and maintain documentation on any cervidae movement.

(f) Each cervid shall have at least two (2) identifiers ~~which~~that may include an official ear tag or any other visible~~,~~ and permanent identification device approved by the Board.

(g) The initial herd inventory shall contain a Global Positioning System (GPS) or legal description of the premises and shall include a detailed description of the physical facilities, including fences, gates, and structures.

(h) Herd status.

(1) The status of each herd shall be based on the number of years the herd has been enrolled in the CWD herd certification program and shown no evidence of CWD.

(2) If cervidae from a herd of lower status are added to another herd, the receiving herd's status shall revert to the same status as the herd from which the cervidae were acquired.

(3) If a cervid is added from a herd that is not in the CWD herd certification program, the receiving herd shall lose its herd status and ~~start over at~~return to the beginning of the herd certification process.

(i) Diagnosis of CWD shall be determined by testing a post-mortem brain at a CWD certified laboratory. Any positive diagnosis at ~~one~~a laboratory shall be confirmed by the National Veterinary Services Laboratory (NVSL) or other CWD certified laboratory.

(j) The Board shall issue a quarantine on any herd that contained a CWD positive cervid. The quarantined herd shall not participate in the herd certification program until all herd plan requirements are completed.

(k) Herd owners shall maintain a minimum of thirty (30) feet of separation at all times between a certified herd and any non-certified confined herd.

PART 7. INTERSTATE MOVEMENT REQUIREMENTS

35:15-47-18. Minimum CWD requirements for interstate movement of cervids

(a) A person shall not import white-tail deer, black-tail deer, mule deer, red deer (European elk), or elk into the state of Oklahoma if the state of origin has ever had any free-ranging cervidae infected with CWD. The State Veterinarian may grant an exemption from this requirement but only under quarantine restrictions.

(b) A person shall not import white-tail deer, black-tail deer, mule deer, red deer (European elk), or elk into the state of Oklahoma unless the herd of origin has participated ~~since January 1, 2002,~~for a minimum of five (5) years in a state or federal CWD herd certification program that imposes response measures for positive and trace herds at least equal to the Oklahoma requirements ~~described in this Subchapter.~~, except in the following circumstances:

(1) The herd of origin was enrolled in an equivalent state or federal CWD monitoring program prior to July 1, 2002;

(2) The herd of origin was enrolled in an equivalent state or federal CWD monitoring program for a minimum of three (3) years prior to July 1, 2006; or

(3) The herd of origin was enrolled in an equivalent state or federal CWD monitoring program for a minimum of four (4) years prior to July 1, 2007.

(c) Any person importing cervidae to an approved slaughter facility operated pursuant to state or federal inspection is exempt from ~~(a) and (b)~~the provisions of this section, ~~as~~so long as the cervidae are transported directly to the slaughter facility without any diversions.

[OAR Docket #06-1083; filed 5-25-06]

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

[OAR Docket #06-1086]

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RULES:
Subchapter 3. Rural Fire Protection Program Fund Act
Part 5. Matching Grant Program
35:20-3-22. [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), (15), and (29); 2 O.S. §§ 16-10 et seq; and 19 O.S. §§ 901.55 et seq.
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ANALYSIS:
The proposed rule increases the maximum level of state or federal share for matching grant programs for rural fire protection.
CONTACT PERSON:
Kurt Atkinson, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-6147

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. RURAL FIRE PROTECTION PROGRAM FUND ACT

PART 5. MATCHING GRANT PROGRAM

35:20-3-22. Matching grant limitations

(a) ~~Maximum amounts.~~ The maximum state or federal share of projects funded under the matching grant programs ~~will~~shall be as follows:

(1) The ~~80~~ eighty percent (80%) state share for fire-related equipment shall not exceed ~~$8,000.00~~$10,000.00.

(2) The ~~80~~ eighty percent (80%) state share for fire station construction or improvements shall not exceed ~~$16,000.00~~$20,000.00.

(3) The ~~50~~ fifty percent (50%) federal share for fire-related equipment and training shall not exceed ~~$1,000~~$2,500.00.

(b) ~~Application restriction.~~ Applicants for state matching grant program funds may apply for either an equipment grant or a fire station grant, but not both in one funding period.

(c) ~~Allowable expenses.~~ State matching grant program funds may be expended for the purchase or maintenance of fire related equipment~~,~~ and structures suitable for fire stations. Applicants ~~will be required to~~shall certify on the application form that the conditions in this section are met when applying for grants for facilities.

(1) No matching grant program funds may be expended or obligated for the purchase of land or construction of fire stations unless all obligations previously incurred for such purposes and to be paid from matching grant program funds have been fully paid and satisfied.

(2) No matching grant program funds shall be expended or obligated for the construction of fire stations unless the eligible participant holds fee simple title, not encumbered by any lien, or holds a lease for a period of not less than ten (10) years, with provisions for renewal of the lease annually, to the land on which it proposes to construct such building. This provision shall not prohibit construction or location of a fire station on land donated in whole or in part for the purpose, and use of matching grant program funds for such construction where the donor has reserved right or reversion of such land under stated

conditions, if such use is reasonable and appropriate as determined by Forestry Services and the Rural Fire Coordinators.

(3) Matching grant program funds shall be expended under the direction of the chief of the fire department upon duly executed vouchers approved as required by law.

[OAR Docket #06-1086; filed 5-25-06]

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

[OAR Docket #06-1089]

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Subchapter 17. Combined Pesticide
Part 3. Certification, Conduct of Examinations, and Recertification
35:30-17-6. [AMENDED]
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Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2) and (29), 3-81 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
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ANALYSIS:
The proposed rule clarifies that timber treating and aerial are two separate categories for purposes of continuing education units (CEUs).
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 17. COMBINED PESTICIDE

PART 3. CERTIFICATION, CONDUCT OF EXAMINATIONS, AND RECERTIFICATION

35:30-17-6. Recertification

(a) ~~Recertification will be required~~Each certified applicator shall seek recertification every five (5) years.

(b) ~~Successful completion of recertification~~A certified applicator shall ~~consist of~~ either ~~passing~~pass a written examination or ~~earning~~earn a specified number of ~~Board approved~~ Continuing Education Units (CEU) approved by the Department to successfully complete recertification. ~~One~~Approximately one (1) hour of education shall be the equivalent of one (1) CEU ~~will equal approximately one (1) hour~~. The CEU requirements for each category are ~~listed~~ as follows:

(1) 1a - Agricultural Plant:
  (A) Total in five years - 20 CEU
  (B) Maximum in any one year - 10 CEU
(2) 1b - Agricultural Animal:
  (A) Total in five years - 5 CEU
  (B) Maximum in any one year - 2 CEU
(3) 2 - Forest:
  (A) Total in five years - 10 CEU
  (B) Maximum in any one year - 5 CEU
(4) 3a - Ornamental and Turf Outdoor:
  (A) Total in five years - 20 CEU
  (B) Maximum in any one year - 10 CEU
(5) 3b - Interiorscape:
  (A) Total in five years - 10 CEU
  (B) Maximum in any one year - 5 CEU
(6) 3c - Nursery/Greenhouse:
  (A) Total in five years - 15 CEU
  (B) Maximum in any one year - 7 CEU
(7) 4 - Seed Treatment:
  (A) Total in five years - 5 CEU
  (B) Maximum in any one year 2 CEU
(8) 5 - Aquatic:
  (A) Total in five years - 5 CEU
  (B) Maximum in any one year 2 CEU
(9) 6 - Right-of-Way:
  (A) Total in five years - 15 CEU
  (B) Maximum in any one year 7 CEU
(10) 7a - General Pest:
  (A) Total in five years - 20 CEU
  (B) Maximum in one year - 10 CEU
(11) 7b - Structural Pest:
  (A) Total in five years - 20 CEU
  (B) Maximum in one year - 10 CEU
(12) 7c - Fumigation:
  (A) Total in five years - 10 CEU
  (B) Maximum in one year - 5 CEU
(13) 7d - Food Processing:
  (A) Total in five years - 15 CEU
  (B) Maximum in one year - 7 CEU
(14) 8 - Public Health:
  (A) Total in five years - 15 CEU
  (B) Maximum in one year - 7 CEU
(15) 9 - Regulatory:
  (A) Total in five years - 10 CEU

(B) Maximum in one year - 5 CEU

(16) 10 - Demonstration & Research in app. Category:

(A) Total in five years - 20 CEU

(B) Maximum in one year - 10 CEU

(17) 11 - Bird & Predatory:

(A) Total in five years - 5 CEU

(B) Maximum in one year - 2 CEU

(18) 12 - Timber Treating (all subcategories)~~ Aerial~~:

(A) Total in five years - 5 CEU

(B) Maximum in one year - 2 CEU

(19) 13 - ~~Speciality~~Specialty Category:

(A) Total in five years - 5 CEU

(B) Maximum in any one year - 2 CEU

(20) 14 - Aerial:

(A) Total in five years - 5 CEU

(B) Maximum in any one year - 2 CEU

(c) ~~To assure continuing education, no~~No more than one-half (1/2) of the total credit units ~~will~~shall be accepted for any one (1) calendar year.~~ Credit units must be obtained in at least three (3) of the five (5) years, in any combination, so that the total number obtained equals or exceeds the five (5) year requirement. The continuing education units required for an applicator recertification period may be prorated for the remainder of the period. A CEU may also be credited to more than one (1) category.~~

(1) Credit units shall be obtained in at least three (3) of the five (5) years, in any combination, so that the total number obtained equals or exceeds the five (5) year requirement.

(2) The continuing education units may be prorated for any applicator whose recertification period is less than five (5) years.

(3) The Department may allow a CEU to be credited to more than one (1) category.

(d) The CEU ~~should~~shall be structured to provide the following ~~type~~ information over the five (5) year period~~.~~:

(1) Laws and rules~~.~~;

(2) Pesticides (formulations, registration, labeling and label comprehension, handling and storage, toxicity, and hazards)~~.~~;

(3) Application equipment and calibration~~.~~;

(4) Pests and IPM~~.~~;

(5) Identification of hazardous areas~~.~~;

(6) Drift prevention~~.~~;

(7) Endangered species~~.~~;

(8) Groundwater~~.~~; and

(9) Worker protection.

(e) Any person ~~wishing to have~~may request approval of an education program ~~considered for Continuing Education Units shall submit the following to the Board:~~as CEU.

(1) The request for approval shall include the following:

(A) A list of proposed topics including a description of the content and ~~an indication of~~ their relative value for meeting the standards of continuing certification~~.~~;

(~~2~~B) A list of speakers and their qualifications~~.~~; and

(~~3~~C) Method used to verify attendance and evaluate the progress of participants.

(~~f~~2) ~~After receipt of this information, the Board~~The Department and the Oklahoma State University Pesticide Coordinator ~~will~~shall review the request for approval to determine ~~whether or not~~if it meets the criteria of CEU.~~ If the program is accepted the person shall be notified of the number of assigned CEU. Any person contesting the number of units assigned may appeal to a review committee consisting of OSU personnel, a Board representative, and an industry representative.~~

(A) If the education program is approved for CEU, the person requesting approval shall be notified of the number of assigned CEU.

(B) The person requesting approval may appeal the number of assigned CEU to a three-person review committee with a representative from each of the following:

(i) Oklahoma State University;

(ii) the Department; and

(iii) certified applicators.

~~(g) A person may have units assigned prior to an event for advanced advertisement so long as the required information is submitted at least six (6) weeks prior to the event.~~

[OAR Docket #06-1089; filed 5-25-06]

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

[OAR Docket #06-1087]

RULEMAKING ACTION:
PERMANENT final adoption

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]

AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2) and (29), 3-85; Article 6, Section 31, Constitution of the State of Oklahoma

DATES:
Comment period:
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Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2006
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May 18, 2006

Effective:
June 25, 2006
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules provide minimum levels for termiticides applied to soil. The rules provide requirements for new products not already addressed.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

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. Soil residue levels, parts per million (ppm)

(a) Post construction termiticide treatments with sampling performed within 180 days of treatment shall disclose residue threshold levels established in the vertical barrier for termiticides based on values obtained from research conducted at the U.S. Forest Research Center, Gulfport, Mississippi; Kard et al. 1989; Kard 1991, 1992, 1994, The Bayer Company, Agricultural Division, and the Board may establish interim residue levels for termiticide products for which no lowest expected threshold value exists utilizing input from Oklahoma State University, manufacturers, or industry until a value has been established.

(1) Torpedo shall have a residue threshold level of 63 ppm.
(2) Tribute shall have a residue threshold level of 150 ppm.
(3) Prevail FT shall have a residue threshold level of 46 ppm.
(4) Demon TC shall have a residue threshold level of 28 ppm.
(5) Dragnet FT shall have a residue threshold level of 85 ppm.
(6) Dursban TC shall have a residue threshold level of 51 ppm.
(7) Premise shall have a residue threshold level of 10 ppm.
(8) Cyren TC shall have a residue threshold level of 51 ppm.
(9) Navigator 4TC shall have a residue threshold level of 51 ppm.
(10) Chlorpyrifos Pro Termite Concentrate shall have a residue threshold level of 51 pm.
(11) Termidor WG and Termidor SC shall have a residue threshold level of 12 ppm.
(12) Cypermethrin G-Pro, EPA Reg. No. 79676-1, shall have a residue threshold level of 46 ppm.
(13) Permethrin TC, EPA Reg. No. 51036-287 and Permethrin Pro, EPA Reg. No. 1021-1836, shall have a residue threshold level of 85 ppm.
(14) Demon Max Insecticide, EPA Reg. No. 100-1218, shall have a residue threshold level of 28 ppm.
(15) Talstar One Multi-Insecticide, EPA Reg. No. 279-3206, shall have a residue threshold level of 11 ppm.
(16) Biflex SFR Termiticide/Insecticide, EPA Reg. No. 279-3177, shall have a residue threshold level of 11 ppm.

(b) Pre-construction termiticide treatments (pre-treats) with sampling performed within 30 days or 180 days of treatment shall disclose residue threshold levels established in the vertical barrier for termiticides based on values obtained from research conducted at the U.S. Forest Research Center, Gulfport, Mississippi; Kard et al. 1989; Kard 1991, 1992, 1994, The Bayer Company, Agricultural Division, and the Board may establish interim residue levels for termiticide products for which no lowest expected threshold value exists utilizing input from Oklahoma State University, manufacturers, or industry until a value has been established.

(1) Torpedo:
(A) Shall have a residue threshold level within 30 days of treatment of 90 ppm.
(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 63 ppm.
(2) Tribute:
(A) Shall have a residue threshold level within 30 days of treatment of 204 ppm.
(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 150 ppm.
(3) Prevail FT:
(A) Shall have a residue threshold level within 30 days of treatment of 64 ppm.
(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 46 ppm.
(4) Demon TC:
(A) Shall have a residue threshold level within 30 days of treatment of 41 ppm.
(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 28 ppm.
(5) Dragnet FT:
(A) Shall have a residue threshold level within 30 days of treatment of 97 ppm.
(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 85 ppm.
(6) Dursban TC:
(A) Shall have a residue threshold level within 30 days of treatment of 100 ppm.
(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 51 ppm.
(7) Premise:

(A) Shall have a residue threshold level within 30 days of treatment of 10 ppm.

(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 10 ppm.

(8) Cyren TC:

(A) Shall have a residue threshold level within 30 days of treatment of 100 ppm.

(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 51 ppm.

(9) Navigator 4TC:

(A) Shall have a residue threshold level within 30 days of treatment of 100 ppm.

(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 51 ppm.

(10) Chlorpyrifos Pro Termite Concentrate:

(A) Shall have a residue threshold level within 30 days of treatment of 100 ppm.

(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 51 ppm.

(11) Termidor WG and Termidor SC:

(A) Shall have a residue threshold level within 30 days of treatment of 12 ppm.

(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 12 ppm.

(12) Cypermethrin G-Pro, EPA Reg. No. 79676-1:

(A) Shall have a residue threshold level within thirty (30) days of treatment of 64 ppm.

(B) Shall have a residue threshold level after thirty (30) days and within one hundred eighty (180) days of treatment of 46 ppm.

(13) Permethrin TC, EPA Reg. No. 51036-287, and Permethrin Pro, EPA Reg. No. 1021-1836:

(A) Shall have a residue threshold level within thirty (30) days of treatment of 97 ppm.

(B) Shall have a residue threshold level after thirty (30) days and within one hundred eighty (180) days of treatment of 85 ppm.

(14) Demon Max Insecticide, EPA Reg. No. 100-1218:

(A) Shall have a residue threshold level within thirty (30) days of treatment of 41 ppm.

(B) Shall have a residue threshold level after thirty (30) days and within one hundred eighty (180) days of treatment of 28 ppm.

(15) TalstarOne Multi-Insecticide, EPA Reg. No. 279-3206:

(A) Shall have a residue threshold level within thirty (30) days of treatment of 11 ppm.

(B) Shall have a residue threshold level after thirty (30) days and within one hundred eighty (180) days of treatment of 11 ppm.

(16) Biflex SFR Termiticide/Insecticide, EPA Reg. No. 279-3177:

(A) Shall have a residue threshold level within thirty (30) days of treatment of 11 ppm.

(B) Shall have a residue threshold level after thirty (30) days and within one hundred eighty (180) days of treatment of 11 ppm.

(c) Pre-construction termiticide treatments (pre-treats) with sampling performed within 30 days or 180 days of treatment shall disclose residue threshold levels established in the horizontal barriers for termiticides based on values obtained from research conducted at the U.S. Forest Research Center, Gulfport, Mississippi; Kard et al. 1989; Kard 1991, 1992, 1994, The Bayer Company, Agricultural Division, and the Board may establish interim residue levels for termiticide products for which no lowest expected threshold value exists utilizing input from Oklahoma State University, manufacturers, or industry until a value has been established.

(1) Torpedo:

(A) Shall have a residue threshold level within 30 days of treatment of 68 ppm.

(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 47 ppm.

(2) Tribute:

(A) Shall have a residue threshold level within 30 days of treatment of 153 ppm.

(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 113 ppm.

(3) Prevail FT:

(A) Shall have a residue threshold level within 30 days of treatment of 48 ppm.

(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 35 ppm.

(4) Demon TC:

(A) Shall have a residue threshold level within 30 days of treatment of 31 ppm.

(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 21 ppm.

(5) Dragnet FT:

(A) Shall have a residue threshold level within 30 days of treatment of 73 ppm.

(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 64 ppm.

(6) Dursban TC:

(A) Shall have a residue threshold level within 30 days of treatment of 75 ppm.

(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 38 ppm.

(7) Premise:

(A) Shall have a residue threshold level within 30 days of treatment of 5 ppm.

(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 5 ppm.

(8) Cyren TC:

(A) Shall have a residue threshold level within 30 days of treatment of 75 ppm.

(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 38 ppm.

(9) Navigator 4TC:

(A) Shall have a residue threshold level within 30 days of treatment of 75 ppm.

(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 38 ppm.

(10) Chlorpyrifos Pro Termite Concentrate:

(A) Shall have a residue threshold level within 30 days of treatment of 75 ppm.

(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 38 ppm.

(11) Termidor WG and Termidor SC:

(A) Shall have a residue threshold level within 30 days of treatment of 9 ppm.

(B) Shall have a residue threshold level after 30 days and within 180 days of treatment of 9 ppm.

(12) Cypermethrin G-Pro, EPA Reg. No. 79676-1:

(A) Shall have a residue threshold level within thirty (30) days of treatment of 48 ppm.

(B) Shall have a residue threshold level after thirty (30) days and within one hundred eighty (180) days of treatment of 35 ppm.

(13) Permethrin TC, EPA Reg. No. 51036-287, and Permethrin Pro, EPA Reg. No. 1021-1836:

(A) Shall have a residue threshold level within thirty (30) days of treatment of 73 ppm.

(B) Shall have a residue threshold level after thirty (30) days and within one hundred eighty (180) days of treatment of 64 ppm.

(14) Demon Max Insecticide, EPA Reg. No. 100-1218:

(A) Shall have a residue threshold level within thirty (30) days of treatment of 31 ppm.

(B) Shall have a residue threshold level after thirty (30) days and within one hundred eighty (180) days of treatment of 21 ppm.

(15) TalstarOne Multi-Insecticide, EPA Reg. No. 279-3206:

(A) Shall have a residue threshold level within thirty (30) days of treatment of 11 ppm.

(B) Shall have a residue threshold level after thirty (30) days and within one hundred eighty (180) days of treatment of 11 ppm.

(16) Biflex SFR Termiticide/Insecticide, EPA Reg. No. 279-3177:

(A) Shall have a residue threshold level within thirty (30) days of treatment of 11 ppm.

(B) Shall have a residue threshold level after thirty (30) days and within one hundred eighty (180) days of treatment of 11 ppm.

(d) Any distributor product, as defined by 40 C.F.R. § 152.132, or any product with an alternate brand name and identical registration number shall be subject to the residue threshold levels for the related primary registration or brand name contained in this section.

(e) Any product not listed in this section shall have the residue threshold levels as established either through independent research projects accepted by the Department or through accepted documentation provided to the Department by the manufacturer.

(1) Any residue threshold levels established pursuant to this subsection shall be communicated to the public through the Department's website.

(2) The Department shall maintain a list of all records, studies, and correspondence utilized to establish residue threshold levels pursuant to this subsection.

[OAR Docket #06-1087; filed 5-25-06]

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

[OAR Docket #06-1085]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 29. Fertilizer
Part 3. Liquid, Dry, and Anhydrous Ammonia
35:30-29-37. [AMENDED]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2) and (29), 8-77.1 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
DATES:
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January 17, 2006 through February 16, 2006
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May 18, 2006
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The proposed rules provide requirements for paving loading areas at dry fertilizer storage facilities. These requirements include procedures to follow for loading areas at railroad tracks, as well as requiring the paved to be kept clean.
CONTACT PERSON:
Kenny Naylor, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-5974

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 29. FERTILIZER

35:30-29-37. Dry fertilizer requirements

(a) ~~Every~~ The owner or operator shall clearly label each dry bulk storage bin ~~shall be clearly labeled~~ with the grade to identify its fertilizer contents. This requirement shall only apply to individual storage bins and shall not be construed to require labeling on the exterior of any building associated with the dry bulk storage bin.

(b) ~~All~~ The owner or operator shall ensure all dry bulk fertilizers ~~shall be~~ are stored inside a sound structure or device having a cover or rooftop, sidewalls, and base sufficient to prevent contact with precipitation and surface waters.

(c) The owner or operator shall pave any area used for blending, loading, or unloading dry bulk fertilizer with asphalt or concrete.

(1) When loading or unloading occurs on railroad tracks, the owner or operator shall contact the railroad company to request permission to pave those areas.

(2) If the railroad company denies permission, the owner or operator shall notify the Department and request an exception for those limited areas where permission was denied. In no case shall the Department require paving of an area when permission to pave is denied.

(3) The Department may, on a case by case basis, allow the use of impermeable material other than asphalt or concrete on railroad tracks, so long as the impermeable material allows for cleanup.

(d) The owner or operator shall ensure all paved areas are of sufficient size to allow cleanup of any spilled fertilizer and shall ensure they are kept clean.

[OAR Docket #06-1085; filed 5-25-06]

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

[OAR Docket #06-1077]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Oklahoma State Board of Agriculture; 2 O.S. 2001 §§ 2-4(2), (7), (24), (25), and (29), 6-181 et seq., 6-251 et seq., 6-280.1 et seq., and 6-290.1 et seq.; Article 6, Section 31, Constitution of the State of Oklahoma
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March 23, 2006
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Failure of the Legislature to disapprove the rules resulted in approval on May 18, 2006
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June 25, 2006
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
Incorporated standards:
Mandatory Meat Inspection Regulations, Title 9, Code of Federal Regulations (CFR) (2005 Revision)
Incorporating rules:
35:37-3-1 and 35:37-3-3
35:37-5-1 and 35:37-5-2
Availability:
8:00 a.m. to 5:00 p.m., Monday through Friday at Oklahoma Department of Agriculture, Food, and Forestry, 2800 North Lincoln Boulevard, Oklahoma City, OK 73105-4298
ANALYSIS:
The proposed rule changes update the incorporation by reference of Code of Federal Regulations citations.
CONTACT PERSON:
Teena Gunter, Oklahoma Department of Agriculture, Food, and Forestry, (405) 522-4576

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. MEAT INSPECTION

PART 1. GENERAL PROVISIONS

35:37-3-1. Incorporation by reference of federal meat inspection regulations

The Mandatory Meat Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2004~~ 2005 Revision), Parts 301 et seq.; 416 et seq.; 417 et seq.; 424 et seq.; 441 et seq.; and 500 et seq. for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:37-3-3. Whenever an official mark, form, certificate or seal is designated by ~~Federal~~ federal regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry ~~(ODAFF)~~ form, certificate or seal shall be substituted.

35:37-3-3. Deleted regulations

The following sections of the Federal regulations governing the mandatory meat inspection of the USDA incorporated by reference under 35:37-3-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry:

9 CFR 302.2; 303.1(c); 304.1; 304.2(a); 304.2(c); 305.2(b); 307.4; 307.5; 307.6; 316.12; 316.13(c); 317.5; 317.7; 317.9; 317.13; 318.8; 318.12; 321; 322; 327; 329.6; 329.7; 329.8; 329.9; 331; 335; 351; 352; 354; 355; 362; 381; 390; 391; and 590 (~~2004~~ 2005 Revision).

SUBCHAPTER 5. POULTRY PRODUCTS INSPECTION

PART 1. GENERAL PROVISIONS

35:37-5-1. Definitions and incorporation by reference of federal poultry inspection regulations

(a) The Mandatory Poultry Inspection Regulations found in Title 9 of the Code of Federal Regulations (CFR) (~~2004~~ 2005 Revision), Parts 381 et seq.; 416 et seq.; 417 et seq.; 424 et seq.; 441 et seq.; and 500 et seq. for the United States Department of Agriculture (USDA) as promulgated and amended in the Federal Register, are hereby adopted in their entirety with the exception of the deleted regulations specified in 35:37-5-2. Whenever an official mark, form, certificate or seal is designated by ~~Federal~~ federal regulations, the appropriate Oklahoma Department of Agriculture, Food, and Forestry mark, form, certificate or seal shall be substituted.

(b) All words and terms defined or used in the ~~Federal~~ federal regulations incorporated by reference by the Department shall mean the state equivalent or counterpart to those words or terms.

(c) The following terms, when used in this subchapter, shall have the following meaning unless the context clearly indicates otherwise:

(1) "Act" means the Oklahoma Poultry Products Inspection Act.

(2) "Director" means the Director of Meat Inspection.

(3) "Poultry" means any domesticated bird, whether live or dead, including chickens, turkeys, ducks, geese, guineas, ratites, or squabs (also known as young pigeons from one to about thirty (30) days of age).

(4) "Poultry product" means any poultry carcass, part, or product made wholly or in part from any poultry carcass or part ~~which~~ that can be used as human food, except those exempted from definition as a poultry product in Title 9 of the Code of Federal Regulations (CFR), Part 381.15. This term shall not include detached ova.

(5) "Poultry byproduct" means the skin, fat, gizzard, heart, or liver, or any combination of any poultry for cooked, smoked sausage.

35:37-5-2. Deleted regulations and exemptions

(a) The following sections of the Federal regulations governing the mandatory poultry inspection (9 CFR, Part 381 et seq.; 416 et seq.; 417 et seq.; 424 et seq.; 441 et seq.; and 500 et seq.), (~~2004~~ 2005 Revision) of the USDA incorporated by reference under 35:15-27-1 are deleted and are not rules of the Oklahoma Department of Agriculture, Food, and Forestry: 381.6; 381.10(a)(2), (5), (6), and (7); 381.10(b); 381.10(d)(2)(i); 381.13(b); 381.16; 381.17; 381.20; 381.21; 381.37; 381.38; 381.39; 381.96; 381.101; 381.103 through 381.112; 381.123(b)(1) and (4); 381.132(c); 381.133; 381.179; 381.185; 381.186; and 381.195 through 381.225.

(b) The provisions of this Act and rules do not apply to poultry producers ~~with respect to~~ who slaughter their own poultry ~~of their own raising~~ raised on their ~~own farms~~ farm, ~~which they slaughter if~~ and each of the following apply:

(1) ~~Such~~ The producers slaughter ~~not~~ no more than two hundred and fifty (250) turkeys~~,~~ or ~~not more than an~~ their equivalent ~~number of~~ with a ratio of four (4) birds of ~~all~~ other species, excluding ratites, to one (1) turkey during ~~the~~ a calendar year ~~for which this exemption is being determined, four (4) birds of other species being deemed the equivalent of one (1) turkey~~; ~~and~~

(2) ~~Such poultry~~ The producers do not engage in buying or selling poultry products other than those produced from poultry raised on their own farms; ~~and~~

(3) ~~None of such~~ The poultry ~~moves~~ and poultry products do not move in "commerce~~," as defined in 35:37-5-1~~. Poultry producers are ~~specifically~~ prohibited from selling or donating uninspected poultry products to retail stores, brokers, meat markets, schools, orphanages, restaurants, nursing homes, and other similar establishments~~. Said persons~~ and are ~~further~~ prohibited from sales or donation of uninspected poultry through any type of retail market or similar establishment owned or operated by the poultry ~~raiser~~ producer; ~~and~~

(4) ~~Such poultry producer completes~~ The producers submit a certificate of registration ~~and submits it~~ to the Board; ~~and~~

(5) ~~Such~~ The poultry is healthy, ~~and~~ the poultry is slaughtered and processed under sanitary standards, practices, and procedures ~~as~~ that result in the preparation of poultry products that are sound, clean, and fit for human food, and each carcass, part, or poultry product ~~bear labeling~~ bears a label that lists the customer's name, the producer's name, and the following statement, "This poultry product has not been inspected and passed"; ~~and~~

(6) ~~Such~~ The poultry is sold directly to the household consumer and transported by either the household consumer or ~~transported directly to the consumer by~~ the poultry producer without third-party intervention~~,~~ or intervening transfer or storage, and is maintained in a safe~~,~~ and unadulterated condition during transportation; and

(7) The poultry producers ~~shall~~, ~~at all reasonable times, upon notice by a duly~~ allow an authorized ~~representative~~ agent of the Board~~, afford such representative~~ access to their facilities and an opportunity to examine records at all reasonable times upon notice.

[OAR Docket #06-1077; filed 5-25-06]

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

[OAR Docket #06-1073]

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RULES:
Subchapter 1. Individual Proceedings [NEW]
38:1-1-1. Purpose [NEW]
38:1-1-2. Definitions [NEW]
38:1-1-3. Individual proceedings [NEW]
38:1-1-5. Receiving complaints [NEW]
38:1-1-6. Service of petition and notice [NEW]
38:1-1-7. Emergency actions [NEW]
38:1-1-8. Procedures in individual proceedings [NEW]
38:1-1-9. Continuances [NEW]
38:1-1-10. Discovery [NEW]
38:1-1-11. Protective orders [NEW]
38:1-1-12. Subpoenas [NEW]
38:1-1-13. Conduct and record of hearing [NEW]
38:1-1-14. Sanctions for non-compliance with hearing and discovery procedures [NEW]
38:1-1-15. Order of hearing [NEW]
38:1-1-16. Proposed order and settlement [NEW]
Subchapter 3. Administrative Operations [NEW]
38:1-3-1. Purpose [NEW]
38:1-3-6. Agency administration [NEW]
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38:1-1-3. [NEW]
38:1-1-5. [NEW]
38:1-1-6. [NEW]
38:1-1-7. [NEW]
38:1-1-8. [NEW]
38:1-1-9. [NEW]
38:1-1-10. [NEW]
38:1-1-11. [NEW]
38:1-1-12. [NEW]
38:1-1-13. [NEW]
38:1-1-14. [NEW]
38:1-1-15. [NEW]
38:1-1-16. [NEW]
Subchapter 3. Administrative Operations [NEW]
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n/a
ANALYSIS:
These proposed rules implement 59 O.S. § 1870 through 1885, the statutory mandate to promulgate rules of conduct governing the practice of, and continuing education requirements for, certified and licensed alcohol and drug counselors.
CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, #104

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. INDIVIDUAL PROCEEDINGS

38:1-1-1. Purpose

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

38:1-1-2. Definitions

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

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

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

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

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

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

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

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

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

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

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

"Certified Alcohol and Drug Counselor" or **"CADC"** means any person who offers alcohol and drug counseling services for compensation to any person and is certified pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act. The term "certified alcohol and drug counselor" shall not include those professions exempted by Section 1872 of this Title.

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

"Complaint Review Committee" or **"CRC"** is a committee appointed by the Board whose purpose is to review complaints received by the Board regarding alleged infractions on the part of a licensed or certified alcohol and drug counselor.

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

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

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

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

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

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

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

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

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

(E) orders by an agency; or

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

38:1-1-3. Individual proceedings

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

38:1-1-5. Receiving complaints

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

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

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

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

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

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

(5) notify the Board chair and Complaint Review Committee.

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

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

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

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

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

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

38:1-1-7. Emergency actions

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

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

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

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

38:1-1-9. Continuances

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

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

38:1-1-10. Discovery

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

38:1-1-11. Protective orders

The Board chair or the Hearing Officer at the hearing or at anytime upon application of a party, with or without notice, may make such orders relating to discovery as may be necessary or appropriate for the protection of the parties, and to prevent hardship to and excessive burden upon a party.

38:1-1-12. Subpoenas

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

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

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

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

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

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

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

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

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

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

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

38:1-1-15. Order of hearing

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

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

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

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

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

(4) Parties shall make opening statements where appropriate.

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

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

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

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

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

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

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

SUBCHAPTER 3. ADMINISTRATIVE OPERATIONS

38:1-3-1. Purpose

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

38:1-3-6. Agency administration

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

(1) devote his or her entire time to the duties of the office;

(2) receive salary and benefits as provided by law;

(3) keep and preserve all books and records pertaining to the Board;

(4) have the authority to collect all fees and penalties provided for by the Act;

(5) make quarterly reports to the Board of all monies collected and the sources from which derived;

(6) have authority to approve payrolls and all claims for the Board;

(7) have authority to employ staff, subject to Board approval;

(8) keep a continuous inventory of all properties, excluding supplies, belonging to the board;

(9) develop, institute and administer such administrative and professional policies and official forms as may be necessary to guarantee effective, efficient and uniform operation of the Board; and

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

[OAR Docket #06-1073; filed 5-25-06]

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

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38:10-1-3. Compliance with laws and rules [NEW]
38:10-1-4. Organization [NEW]
38:10-1-5. Public records [NEW]
38:10-1-6. Requests for agency public information [NEW]
38:10-1-7. Forms [NEW]
38:10-1-8. Procedures to secure a declaratory ruling as to the applicability of any rules or order of the Board [NEW]
38:10-1-9. Procedures to petition the Board to request the promulgation, amendment or repeal of a rule [NEW]
Subchapter 3. Rules of Professional Conduct [NEW]
38:10-3-1. Purpose [NEW]
38:10-3-2. Code of ethics [NEW]
38:10-3-3. Client welfare [NEW]
38:10-3-4. Professional standards [NEW]
38:10-3-5. Relations with the public and other professions [NEW]
38:10-3-6. Failure to comply [NEW]
Subchapter 5. Fitness of Applicants [NEW]
38:10-5-1. Purpose [NEW]
38:10-5-2. Fitness for licensure or certification [NEW]

38:10-5-3. Materials considered in determining fitness [NEW]
Subchapter 7. Application [NEW]
38:10-7-1. Purpose [NEW]
38:10-7-2. Requirements for licensure or certification [NEW]
38:10-7-3. Private or independent practice [NEW]
38:10-7-5. Issuance of license or certification [NEW]
38:10-7-6. Application [NEW]
38:10-7-7. Examinations [NEW]
38:10-7-8. Renewal of license or certification [NEW]
38:10-7-9. Reciprocity [NEW]
Subchapter 9. Supervision [NEW]
38:10-9-1. Purpose [NEW]
38:10-9-2. Supervision of work experience [NEW]
38:10-9-4. Approved supervisor status [NEW]
Subchapter 11. Fees [NEW]
38:10-11-1. Schedule of fees [NEW]
38:10-11-2. Method of payment [NEW]
38:10-11-3. Review of fees [NEW]
Subchapter 13. Continuing Education Requirements [NEW]
38:10-13-1. Purpose [NEW]
38:10-13-2. Continuing education standards [NEW]
38:10-13-3. Documentation of attendance [NEW]
38:10-13-4. Audit of continuing education submissions [NEW]
38:10-13-5. Failure to complete continuing education or submit verification [NEW]
38:10-13-6. Fraudulent continuing education submissions [NEW]
Appendix A. Licensed/Certified Counselor Code of Ethics [NEW]

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38:10-1-2. Definitions [NEW]
38:10-1-3. Compliance with laws and rules [NEW]
38:10-1-4. Organization [NEW]
38:10-1-5. Public records [NEW]
38:10-1-6. Requests for agency public information [NEW]
38:10-1-7. Forms [NEW]
38:10-1-8. Procedures to secure a declaratory ruling as to the applicability of any rules or order of the Board [NEW]
38:10-1-9. Procedures to petition the Board to request the promulgation, amendment or repeal of a rule [NEW]
Subchapter 3. Rules of Professional Conduct [NEW]
38:10-3-1. Purpose [NEW]
38:10-3-2. Code of ethics [NEW]
38:10-3-3. Client welfare [NEW]
38:10-3-4. Professional standards [NEW]
38:10-3-5. Relations with the public and other professions [NEW]
38:10-3-6. Failure to comply [NEW]
Subchapter 5. Fitness of Applicants [NEW]
38:10-5-1. Purpose [NEW]
38:10-5-2. Fitness for licensure or certification [NEW]
38:10-5-3. Materials considered in determining fitness [NEW]
Subchapter 7. Application [NEW]
38:10-7-1. Purpose [NEW]
38:10-7-2. Requirements for licensure or certification [NEW]
38:10-7-3. Private or independent practice [NEW]
38:10-7-5. Issuance of license or certification [NEW]
38:10-7-6. Application [NEW]
38:10-7-7. Examinations [NEW]
38:10-7-8. Renewal of license or certification [NEW]
38:10-7-9. Reciprocity [NEW]
Subchapter 9. Supervision [NEW]
38:10-9-1. Purpose [NEW]
38:10-9-2. Supervision of work experience [NEW]
38:10-9-4. Approved supervisor status [NEW]
Subchapter 11. Fees [NEW]
38:10-11-1. Schedule of fees [NEW]
38:10-11-2. Method of payment [NEW]
38:10-11-3. Review of fees [NEW]
Subchapter 13. Continuing Education Requirements [NEW]
38:10-13-1. Purpose [NEW]
38:10-13-2. Continuing education standards [NEW]
38:10-13-3. Documentation of attendance [NEW]
38:10-13-4. Audit of continuing education submissions [NEW]
38:10-13-5. Failure to complete continuing education or submit verification [NEW]
38:10-13-6. Fraudulent continuing education submissions [NEW]

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ANALYSIS:
These proposed rules implement 59 O.S. § 1870 through 1885, the statutory mandate to promulgate rules of conduct governing the practice of, and continuing education requirements for, certified and licensed alcohol and drug counselors.
CONTACT PERSON:
Jan Ewing, Deputy Director, 405-848-6841, #104

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

38:10-1-1. Applicability

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

38:10-1-2. Definitions

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

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

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

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

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

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

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

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

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

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

"Certified Alcohol and Drug Counselor" or "CADC" means any person who offers alcohol and drug counseling services for compensation to any person and is certified pursuant to the provisions of the Licensed Alcohol and Drug Counselors Act. The term "certified alcohol and drug counselor" shall not include those professions exempted by Section 1872 of this Title.

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

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

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

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

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

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

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

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

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

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

(E) orders by an agency, or

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

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

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

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

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

38:10-1-4. Organization

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

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

38:10-1-5. Public records

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

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

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

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

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

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

(3) The requesting party shall pay a fee for copies. Said fee shall be twenty-five cents (25¢) per page, twelve dollars ($12.00) per $3\frac{1}{2}$-inch diskette, and $1.00 per page for certified documents. For commercial requests or those that would cause excessive disruption of office function, such as documents that are archived, either internally or with the Oklahoma Archives and Records Commission, a search fee will be charged based upon the hourly rate of the individual(s) searching for, and locating, the requested records.

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

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

38:10-1-7. Forms

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

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

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

(1) The petition must be in writing and submitted to the Board in person, or via regular or certified mail;

(2) The petition shall state with specificity the rule or order in question;

(3) The petition shall set forth the contents of the rule or order;

(4) The petition shall state clearly and with specificity the basis for the action and the action or relief sought; and

(5) The petition shall pose the specific question(s) to be answered by the Board.

(b) Upon receipt of the petition requesting such declaratory ruling, The Board shall consider the petition and response to the request at its next regularly scheduled Board meeting subsequent to the filing of the petition.

(c) The Board may entertain oral presentation or argument on the request of the petitioner and, on its own motion, may request such argument or presentation.

(d) On considering the petition, the Board, in its sound discretion may refuse to issue a declaratory ruling, may decide the issue and determine the validity of the rule or order or the applicability to the petitioner of the rule or order.

(e) Appeals from declaratory rulings of the Board may be taken in a manner consistent with the Oklahoma Administrative Procedures Act.

(f) A declaratory ruling or refusal to issue such ruling, shall be subject to judicial review in the manner provided for review of decisions in individual proceedings in the Oklahoma Administrative Procedures Act (75 O.S. § 307).

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

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

(1) The petition must be in writing and submitted to the Board in person or via regular or certified mail, and include:

(A) The proposed amendment, promulgation, or repeal of a specific rule.

(B) The reason for the petition to repeal, promulgate, or amend a rule.

(C) The effect that the repeal, amendment or promulgation of the rule would have on the petitioner.

(2) The petitioner must print his or her name, address and telephone number on the petition and it must be signed by the petitioner.

(3) The Board shall timely respond to such petition, either by initiating rulemaking proceedings or by denying the petition.
(4) The petitioner will be notified by regular mail if rulemaking proceedings are initiated.

SUBCHAPTER 3. RULES OF PROFESSIONAL CONDUCT

38:10-3-1. Purpose

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

38:10-3-2. Code of ethics

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

38:10-3-3. Client welfare

(a) **Titles 42 and 45 CFR.** All drug or alcohol abuse treatment information, whether recorded or not, and all communications between a LADC or CADC and his or her client are both privileged and confidential. In addition, the identity of all clients who have received or are receiving drug or alcohol abuse treatment services is both confidential and privileged. Such information shall only be available to persons or agencies actively engaged in the treatment of the client unless an exception under state or federal law applies. The information available to persons or agencies actively engaged in the treatment of the client shall be limited to the minimum amount of information necessary for the person or agency to carry out its function or the purpose for the release.
(b) **Discrimination.** LADCs and CADCs shall not participate in, condone or promote discrimination on the basis of race, color, age, gender, religion, sexual orientation, or national origin.
(c) **Credentials.** LADCs and CADCs shall not misrepresent professional qualifications, education, affiliations, or services performed.
(d) **Records.**
(1) **Retention.** LADCs and CADCs shall maintain verifiable records necessary for rendering professional services to their clients for at least five (5) years beyond termination of services, or in compliance with the employing agency's records disposition schedule.
(2) **Confidentiality.** LADCs and CADCs shall be responsible for securing the safety and confidentiality of any counseling record they create, maintain, transfer, or destroy whether the record is written, taped, computerized, or stored in any other medium.
(3) **Client access.** LADCs and CADCs shall provide the client with a copy of the client's record in accordance with state and federal law. In situations involving multiple clients, access to records is limited to those parts of the record that do not include confidential information related to another client.
(e) **Dual relationships.** LADCs and CADCs shall be aware of their influential positions with respect to clients, and shall not exploit the trust and dependency of clients. Examples of such relationships include, but are not limited to, familial, social, financial, business, professional or close personal relationships with clients. When the possibility that a dual relationship exists, the LADC and CADC shall take appropriate professional precautions such as informed consent, consultation, supervision and documentation to ensure judgment is not impaired and no exploitation occurs.
(f) **Privacy.**
(1) LADCs and CADCs shall not make inquiry into persons or situations not directly associated with the client's treatment.
(2) LADCs and CADCs shall respect the privacy of clients and hold in confidence all information obtained in

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

(i) consultation with another professional on behalf of the client;

(ii) duty to warn;

(iii) child abuse and sexual molestation; or,

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

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

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

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

38:10-3-4. Professional standards

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

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

(c) **Sexual contact.**

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

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

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

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

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

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

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

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

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

(1) The statements are based on appropriate professional literature and practice.

(2) The statements are otherwise consistent with the mandates of the Rules of Professional Conduct.

(3) There is no implication that a professional counseling relationship has been established.

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

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

38:10-3-6. Failure to comply

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

SUBCHAPTER 5. FITNESS OF APPLICANTS

38:10-5-1. Purpose

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

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

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

(1) Lack of necessary skills and abilities to provide adequate services.

(2) Misrepresentation on the application or other materials submitted to the Board; or,

(3) A violation of the Rules of Professional Conduct delineated in Subchapter 3.

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

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

(1) Evaluations from supervisors or instructors;

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

(3) Evaluations from employers or professional associations.

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

(1) Allegations of clients;

(2) Transcripts or other findings from official court, hearing or investigative proceedings; and

(3) Any other information which the Board considers pertinent to determining the fitness of applicants.

SUBCHAPTER 7. APPLICATION

38:10-7-1. Purpose

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

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

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

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

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

(2) Each applicant for a licensure:

(A) Be possessed of good moral character;

(B) Pass an oral and written examination;

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

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

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

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

(G) Successfully completed at least one (1) year of full-time supervised work experience. For the purpose of the Act, "one (1) year of full-time work experience" shall be defined as two thousand (2,000) hours of work experience, of which at least one thousand (1,000) hours shall consist of providing alcohol and drug counseling services to an individual and/or the individual's family;

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

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

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

(1) An application for certification as a CADC shall be made to the Oklahoma Board of Licensed Alcohol and Drug Counselors in writing. Such application shall be on a form and in a manner prescribed by the Board. The application shall be accompanied by the fee required by the Act, which shall be retained by the Board and not returned to the applicant.

(2) Each applicant for certification shall:

(A) Be possessed of good moral character;

(B) Pass an oral and written examination;

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

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

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

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

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

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

(I) Successfully completed, as a part of or in addition to the education requirements established in paragraph three of this subsection, a minimum of

forty-five (45) clock hours of specialized training approved by the Board in identifying co-occurring disorders and making appropriate referrals for treatment of co-occurring disorders; and

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

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

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

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

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

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

(4) has had no less than three years of full-time or the equivalent thereto of part-time experience, a total of 6,000 hours of supervised work experience in the alcohol and drug counseling field, and shall continue to meet continuing education requirements set by the Board; and,

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

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

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

38:10-7-6. Application

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

(1) Application fee;

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

(3) A full-face photograph, at least two inch by three inches, taken within the last 12 months, or a photocopy of a current driver's license;

(4) Official transcript in sealed envelope;

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

(6) Signed code of ethics;

(7) Personal philosophy;

(8) Three professional references; and,

(9) Supervision contract;

(b) An applicant shall:

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

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

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

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

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

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

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

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

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

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

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

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

(i) An applicant must receive written notice of receipt of his or her application from the Board before accumulating any supervised work experience or taking the examination or providing substance abuse services.

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

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

38:10-7-7. Examinations

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

(b) **Examination.** Each applicant shall take and pass written and oral examinations.

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

(d) **Application.**

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

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

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

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

(f) **Notice of results.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

38:10-7-9. Reciprocity

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

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

SUBCHAPTER 9. SUPERVISION

38:10-9-1. Purpose

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

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

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

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

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

38:10-9-4. Approved supervisor status

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

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

(1) The supervisor is responsible for having and maintaining knowledge about the supervisee's practices whether in a private or agency setting.

(2) The supervisor is responsible for providing professional consultation and monitoring the supervisee's ethical and professional practices.

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

(4) A contract will be negotiated by supervisor and supervisee and a copy furnished to the Board prior to beginning the supervision. Any supervision completed prior to approval of the supervision contract will not be accepted. Such a contract shall not be valid if the supervisor and supervisee have a relationship that could affect the employment or benefits of the supervisor, and that relationship could, in any way, bias or compromise the completion of the minimum number of hours required, the supervisee is responsible for negotiating a new contract and obtaining all evaluation and termination forms required to document prior supervision.
(5) If supervision is terminated by either party, the supervisee must notify the Board within 14 days of the termination in writing in a format prescribed by the Board.
(6) The supervisor is free to ask for a sample of the supervisee's work.
(7) When the proposed supervisor is not a staff member of the supervisee's agency, the proposed supervisor will ensure that the agency administration, or its representative, is in accord with the arrangements for supervision. This is essential whether these arrangements are made by the agency or the supervisee and regardless of whether the agency contributes to the financial compensation of the supervisor. The supervisor is responsible for securing agreement from the agency administration as to the purpose and content of the desired supervision and the supervisor's specific role responsibilities and limitations. The supervisor is also responsible for learning agency functions and policies so that any supervisory suggestions are constructive and realistic within agency purposes and resources.
(8) An individual may contract for supervision from a Board-approved supervisor.
(9) Supervisors shall adhere to the mandates of these rules.
(10) The supervisor must immediately notify the Board if he or she feels any questionable ethical or professional violations on the part of the supervisee exists.
(11) Supervisor is also responsible for notifying the Board in writing within 14 days of the date supervision is terminated.

SUBCHAPTER 11. FEES

38:10-11-1. Schedule of fees

Fees are non-refundable and include:
(1) **Application fee.** One-hundred and forty dollars ($140.00) and shall be submitted with the application form.
(2) **Written examination fee.** One-hundred and twenty-five dollars ($125.00). Shall be submitted prior to taking the written examination.
(3) **Oral examination fee.** Seventy-five dollars ($75.00). Shall be submitted prior to taking the oral examination.
(4) **Initial license or certification fee.** One-hundred dollars shall be submitted prior to the receipt of license or certificate. The initial license or certification notices shall invoice the licensed or certified person for the interim period between the original license or certification date and the following June 30 so that subsequent renewals shall be on a July 1 annual basis.
(5) **Renewal fee.** One-hundred dollars ($100.00). Shall be submitted upon notification by the Board on or before June 30, and validates the license or certification for twelve (12) months.
(6) **Late renewal fee.** Twenty-five dollars ($25.00) will be charged each month, if the license or certification is not renewed by June 30. This fee combined with the renewal fee shall not exceed $200.00. The licensed or certified person must submit this fee as well as the renewal fee on or before the following June 30 to avoid revocation.
(7) **Replacement fee.** Twenty-five dollars ($25.00). Shall be submitted for the issuance of a license or certification to replace a license which has been lost, damaged, or is in need of revision.
(8) **Inactive license or certification fee.** Twenty-five dollars ($25.00). Payment of this fee renders the license or certification inactive and suspends all rights and privileges granted by the license or certification for a period of no more that two (2) years. If not renewed within the two (2) year period, license or certification is considered lapsed.
(9) **Mailing list of licensed and certified counselors.** Thirty-five dollars ($35.00).
(10) **Written verification of licensure or certification.** Five dollars ($5.00).
(11) **Duplication of public records.** Twenty-five cents ($.25) per page.
(12) **Investigation or prosecution.** At cost incurred.
(13) **Returned check processing fee.** Fifty Dollars ($50.00).
(14) **Probation.** Twenty-five dollars ($25.00) per month.

38:10-11-2. Method of payment

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

38:10-11-3. Review of fees

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

SUBCHAPTER 13. CONTINUING EDUCATION REQUIREMENTS

38:10-13-1. Purpose

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

38:10-13-2. Continuing education standards

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

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

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

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

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

38:10-13-3. Documentation of attendance

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

(1) An official continuing education validation form furnished by the presenter; or,

(2) A letter on the sponsoring presenter's letterhead giving the name of the program, location, dates, subjects taught, total number of hours attended, participant's name and presenter's name and credentials; or,

(3) An official graduate transcript showing course or audit credit; or,

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

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

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

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

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

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

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

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

APPENDIX A. LICENSED/CERTIFIED COUNSELOR CODE OF ETHICS [NEW]

LICENSED/CERTIFIED COUNSELOR CODE OF ETHICS

I HEREBY AFFIRM THAT...

A. My primary goal is recovery for the client and his families; that I have a total commitment to provide the highest quality care for those who seek my professional services.
B. I shall evidence a genuine interest in all clients and families and do hereby dedicate myself to the best interest of the clients and to helping them to help themselves.
C. I shall maintain at all times an objective, non-possessive, professional relationship with all clients.
D. I shall be willing to recognize when it is in the best interest of the client to release them or refer them to another program or individual.
E. I shall adhere to all the professional rules of confidentiality of all maintenance and distributions of records, material, and knowledge concerning the client and respect the integrity and protect the welfare of the person or group with whom I am working.
F. I shall not in any way discriminate between clients, families, or fellow professionals based on race, religion, age, sex, handicap, national ancestry, sexual orientation or economic conditions.
G. I shall respect the rights and views of other counselors and professionals.
H. I shall advocate changes in public policy and legislation to afford opportunity and choices for all diseased chemical abusers endangering themselves and others.
I. I shall maintain respect for institutional policies and management functions within agencies and institutions, but will take the initiative toward improving such policies when it will better serve the interest of the client.
J. I have a commitment to assess my own personal strengths, limitations, biases, and effectiveness on a continuing basis; that I shall continuously strive for self-improvement; that I have a personal responsibility for professional growth through further education and training.
K. I have an individual responsibility to espouse objectivity and integrity; responsibility to uphold legal and moral turpitude and ethical professional codes, responsibility for my own conduct in all areas. Including, but not limited to, personal behavioral, the use of mood altering drugs, and community activities. I am further willing to provide, respond to, and support requests by the credentialing body for professional disclosure of legal and ethical behavior and records relating, impinging or affecting the Alcohol Drug Counselor profession and my professional status.
L. I shall cooperate with duly constituted professional Ethics Boards and promptly supply necessary information unless constrained by demands of specialized confidentiality rules.
M. I have a responsibility to myself, my clients, the community and associates to maintain my physical and mental health and well being and shall adopt a personal and professional stance which promotes the well being of all human beings.

I hereby certify that I have read and agree to abide by the OBLADC code of ethics. I also understand that failure to abide by the OBLADC code of ethics may result in the revocation of my intent status to practice as an alcohol/drug counselor.

_____
PRINT NAME

_____
SIGNATURE DATE

[OAR Docket #06-1074; filed 5-25-06]

TITLE 75. ATTORNEY GENERAL
CHAPTER 1. ADMINISTRATION

[OAR Docket #06-1114]

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PERMANENT final adoption
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75:1-1-5. [NEW]
75:1-1-6. [NEW]
75:1-1-7. [NEW]
75:1-1-8. [NEW]
75:1-1-9. [NEW]
75:1-1-10. [NEW]
Subchapter 3. Contracts for Domestic Violence and Sexual Assault Services
75:1-3-1. [NEW]
75:1-3-2. [NEW]
75:1-3-3. [NEW]
Part 3. Contracts and Contracting Processes
75:1-3-14. [NEW]
75:1-3-15. [NEW]
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Subchapter 5. Procedure in Individual Administrative Proceedings
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Subchapter 7. Certification and Designation of Facility Services
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75:1-3-19. [NEW]
75:1-3-20. [NEW]
Subchapter 5. Procedure in Individual Administrative Proceedings
75:1-5-1. [NEW]
75:1-5-2. [NEW]
75:1-5-3. [NEW]
75:1-5-4. Petition and notice in individual proceedings [NEW]
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75:1-5-12. [NEW]
Subchapter 7. Certification and Designation of Facility Services
75:1-7-1 [NEW]
75:1-7-2 [NEW]
75:1-7-3 [NEW]
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Title 74 O.S. § 18p-3 provides that any domestic violence or sexual assault programs providing services pursuant to a contract or subcontract with the Attorney General and receiving funds from the Attorney General or any contractor with the Attorney General shall be subject to the provisions of the administrative rules of the Attorney General. Further, pursuant to Title 74 O.S.§ 18p-6, the Attorney General is required to adopt and promulgate rules and standards for certification of domestic violence programs and for private facilities and organizations which offer domestic and sexual assault services in this state. The following proposed rules set forth the administrative procedures and requirements which are necessary for such certification as well as the administration of the Victims Services Unit pursuant to 74 O.S. § 18p-1 et seq.
CONTACT PERSON:
Susan Krug(405) 522-0042

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

75:1-1-1. Purpose

(a) These rules are promulgated pursuant to the requirements of the Administrative Procedures Act, 75 O.S. § 250, et seq. The purpose of these rules is to effectively implement and enforce the provisions of Title 74 § 18p-1 *et seq.* of the Oklahoma Statutes. These rules supplement existing state and federal laws, and being duly promulgated, have the force and effect of law.

(b) These rules govern formal proceedings of the Office of the Attorney General. Informal proceedings may be held as announced by the Office of the Attorney General or as agreed with any person.

75:1-1-1.1. Definitions

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

"Certification" means a status which is granted to a person or an entity by the Oklahoma Attorney General, 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."

"Certification report" means a written notice of the deficiencies developed by the Office of the Attorney General.

"Certified facility" means any facility which has received a certification status by the Oklahoma Attorney General.

"Conditional Certification" means a status which is granted to a person or entity by the Oklahoma Attorney General, and indicates approval to provide a particular service or services for a specified period of time,(typically four (4) months) in order to give an renewal applicant an opportunity to achieve 100% compliance with applicable rules.

"Contractor" or **"contractors"** means any person or entity under contract with Office of the Attorney General for the provision of goods, products or services.

"Domestic Violence and Sexual Assault Advisory Council" means a nine-member committee appointed by the Attorney General as described in 74 O.S.§ 18p-2.

"Entities" or **"entity"** means sole proprietorships, partnerships, corporations, limited partnerships, limited liability partnerships, and limited liability companies.

"Facilities" or **"facility"** means entities as described in 74 O.S.§ 18p-6, domestic violence shelters and programs, sexual assault programs, and treatment programs of batterers.

"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.

"Levels of performance" or **"level of performance"** means units of service by types of service.

"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 contract with the Office of the Attorney General, and which are reported to the Office of the Attorney General on the Oklahoma Victim Information System (OVIS).

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

"Site Review Protocol" means an Office of the Attorney General internal document used by the Office of the Attorney General Victims Services Unit 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 Attorney General for his consideration and action.

"Temporary Certification" means a status which is granted to a person or entity by the Oklahoma Attorney General, and indicates approval to provide a particular service or services for six months in order to give an initial applicant an opportunity to achieve 100% compliance with applicable rules.

"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.

"Victims Services Unit" means the Unit created within the Office of the Attorney General to provide services for persons who require domestic violence or sexual assault services through a domestic violence or sexual assault program.

75:1-1-2. Applicability

This, and all subsequent chapters are applicable, unless otherwise specifically noted in a chapter, subchapter, part or section of Oklahoma Administrative Code Title 75, to the Office of the Attorney General, and all facilities under contract with the Office of the Attorney General and/or subject to certification by the Office of the Attorney General (74 O.S.§ 18p-6).

75:1-1-3. Compliance with laws and rules

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

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

75:1-1-4. Organization

(a) The Oklahoma Attorney General is vested with the authority to make rules for the implementation of the Office of the Attorney General's statutorily mandated and permissible functions related to domestic violence and sexual assault programs under 74 O.S.§ 18p-6.

(b) The Oklahoma Attorney General shall maintain such staff as authorized by law and assign said staff to carry out the duties and responsibilities required to fulfill the statutory requirements of 74 O.S.§ 18p-1 *et seq.*, and the rules and directives of the Oklahoma Attorney General.

75:1-1-5. Objectives

The objectives of the Oklahoma Attorney General are as follows:

(1) The provision of quality domestic violence and sexual assault services, within the resources available, to those persons, and their families, receiving services from the facilities, certified by and/or under contract with the Office of the Attorney General.

(2) The services by 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 74 § 18p-1 *et seq.* 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 the Oklahoma Attorney General.

75:1-1-6. Public records

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

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

75:1-1-7. Requests for agency public information

Any person making a request pursuant to 75:1-1-6 shall comply with the following:

(1) Although the law does not require requests under the Open Records Act to be in writing, it is preferred that requests be in writing and mailed to the Office of the Attorney General, Victims Services Unit or sent via facsimile to (405) 557-1770, or made in person during regular office hours between 8:00 a.m. and 5:00 p.m.

(2) The request should describe the record(s) requested, indicate the name of the party making the request, and have the party's mailing address and telephone number.

(3) The requesting party shall pay a fee for copies. Said fee shall be twenty-five cents(254) per page, twelve dollars ($12.00) per 32-inch diskette, and $1.00 per page for certified documents. Copies provided via FAX machine cost $1.00 per page, regardless of the destination of the Faxed copy. For commercial requests or those that would cause excessive disruption of office function, such as documents that are archived, either internally or with the Oklahoma Archives and Records Commission, a search fee will be charged based upon the hourly rate of the individual(s) searching for, and locating, the requested records.

(4) 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, 74 O.S. § 18p-3 and 18p-8, and 42 CFR, Part 2.

(5) Certain Office of the Attorney General employee personnel records are confidential and not subject to the Oklahoma Open Records Act, including employee evaluations, payroll deductions, applications submitted by persons not hired by the Office of the Attorney General; 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 Office of the Attorney General, 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.

(6) 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.

75:1-1-8. Forms

In order to maintain efficiency and uniformity in the administration of duties, the Office of the Attorney General will

devise and maintain forms for use by any party. The forms may be revised periodically to ensure uniformity, efficiency, and expediency. The prescribed forms must be used by all affected parties unless another form is approved by the Office of the Attorney General prior to its submission, or other provisions are stated in subsequent chapters. Additionally, forms may be acquired by request under 75:1-1-7.

75:1-1-9. Procedures to secure a declaratory ruling as to the applicability of any rule or order of the Office of the Attorney General

(a) Any person subject to the rules contained in rules of the Office of the Attorney General (Oklahoma Administrative Code Title 75) may petition for a declaratory ruling as to the applicability of a specific rule and its effect on petitioner. In petitioning the Office of the Attorney General for a declaratory ruling, the following procedures must be followed:

(1) The petition must be in writing and submitted to the Chief, Victims Services Unit, Office of the Attorney General;

(2) The petition shall state with specificity the rule in question;

(3) The petition shall state clearly and with specificity the basis for the action and the action or relief sought;

(4) The petition shall pose the specific question(s) to be answered by the Office of the Attorney General; and

(5) The petitioner or petitioner's authorized representative shall print his or her name, address and telephone number on the petition and sign it.

(b) The petition will be stamped upon receipt by the Office of the Attorney General to show the date of submission. The petition shall be referred to the Chief of the Victims Services Unit to make a recommendation to the Attorney General, who shall issue a ruling within 30 days from the date of submission.

(c) The petitioner shall be notified of the declaratory ruling in writing by the U.S. Mail, certified mail, return receipt requested.

(d) The ruling shall become final unless, within 15 days of receipt, the petitioner files with the Chief of the Victims Services Unit a written request for a hearing before the Attorney General. If the petitioner requests such a hearing, the matter shall be set to be heard by the Attorney General.

(e) At the hearing of the matter by the Attorney General, the petitioner and Chief of the Victims Services Unit shall be permitted to present oral argument to the Attorney General, the length of which shall be limited by the Attorney General. At the conclusion of the presentation of the matter, the Attorney General shall render a decision on the petition and a written decision shall follow within 15 days.

(f) A declaratory ruling or refusal to issue such ruling, shall be subject to judicial review in the manner provided for review of decisions in individual proceedings in the Oklahoma Administrative Procedures Act (75 O.S. § 307).

75:1-1-10. Procedures to petition the Domestic Violence and Sexual Assault Advisory Council to request the promulgation, amendment or repeal of a rule

Any person affected either by a rule adopted and promulgated by the Attorney General, or the lack of a rule and regulation may petition the Domestic Violence and Sexual Assault Advisory Council to recommend to the Attorney General promulgation, adoption, amendment or repeal of a rule pursuant to 75 O.S. § 305 and in accordance with this section.

(1) The petition must be in writing and submitted to the Chief of the Victims Services Unit, Office of the Attorney General:

(A) The proposed amendment, promulgation, or repeal of a specific rule.

(B) The reason for the petition to repeal, promulgate, or amend a rule.

(C) The effect that the repeal, amendment or promulgation of the rule would have on the petitioner.

(2) The petitioner must print his or her name, address and telephone number on the petition and it must be signed by the petitioner.

(3) The Domestic Violence and Sexual Assault Advisory Council shall timely respond to such petition, either by recommending to the Attorney General that rulemaking proceedings be initiated or that the petition be denied.

(4) The petitioner will be notified by regular mail if rulemaking proceedings are initiated.

(5) A petition for rulemaking will be deemed denied if the Office of the Attorney General has not initiated rulemaking proceedings within thirty (30) calendar days after the petition is submitted.

SUBCHAPTER 3. CONTRACTS FOR DOMESTIC VIOLENCE AND SEXUAL ASSAULT SERVICES

PART 1. ELIGIBILITY TO CONTRACT

75:1-3-1. Purpose

The purpose of this Part is to delineate the criteria for eligibility for entities to contract with the Office of the Attorney General for the provision of domestic violence or sexual assault services to the public as permitted or required under Title 74 O.S. § 18p-1 *et seq.*

75:1-3-2. Applicability

This part is applicable to all entities presently under contract with the Office of the Attorney General to provide domestic violence and sexual assault services; and to all entities which may either be, or desire to be, considered for such contracts.

75:1-3-3. Criteria for eligibility to contract

The criteria for eligibility to contract with the Office of the Attorney General are as follows:

(1) The entity shall exist in conformity with Oklahoma Statutes regulating said entity, and provide such proof. In addition, if said entity purports to be a not-for-profit corporation, the proof of exemption from federal taxes under the U.S. Internal Revenue Service Code shall be made.
(2) Revocation, denial or non-renewal of an entity's certification by the Attorney General shall result in contract termination for any service requiring such certification as of the date of the Attorney General's action.
(3) For any facility requiring certification, the facility shall have deficiencies of no more than 20% of the standards on which the facility is reviewed.

PART 3. CONTRACTS AND CONTRACTING PROCESSES

75:1-3-14. Purpose

The purpose of this Part is to describe the contracts and contracting processes of the Office of the Attorney General for the provision of domestic violence or sexual assault services to the public.

75:1-3-15. Applicability

This Part is applicable to all entities presently under contract to provide domestic violence and sexual assault services, and to all entities which may either be, or desire to be, considered for such contracts.

75:1-3-16. Contract forms

Contracts are in a standardized form and format as determined by the Office of the Attorney General which may be revised from time-to-time to meet changing state and federal statutes and regulations, and the requirement of the Office of the Attorney General to fulfill its functions and responsibilities.

75:1-3-17. Competitive bidding

With regard to competitive bidding:
(1) Contracts which are not based upon fixed uniform rates shall be competitively bid unless said contract is exempt from competitive bidding or meets the requirements for sole source justification.
(2) Contracts based upon fixed uniform rates, which have been previously approved by the Department of Central Services, set by the Attorney General, are not subject to competitive bidding [74 O.S. § 85.7 (11)].

75:1-3-18. Contract, services performance

Contracts shall require performance of specific service(s) to be performed. Where the services cannot be broken down into units, specifically measurable and reviewable services shall be stated. Additionally, contracts may contain requirements of performance based upon measurable quality outcome indicators.

75:1-3-19. Contract renewal

(a) Contracts for domestic violence and sexual assault services are considered during the third (3rd) and fourth (4th) quarter of the state 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 client rights violations, and cost effectiveness of the delivery of services.
(c) If the Attorney General 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.

75:1-3-20. Contractor reimbursement rates

Reimbursements to contractors for domestic violence and sexual assault services shall be considered and set in the manner described as follows:
(1) Contractors shall annually, or as otherwise prescribed, submit to the Chief of the Victims Services Unit a uniform cost report in the form and format determined by the Office of the Attorney General, and within time-frames established by the Office of the Attorney General.
(2) The Chief of the Victims Services Unit 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) The Chief of the Victims Services Unit may recommend to the Attorney General 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 approval by the Attorney General of the proposed rates or changes to existing rates, the following shall occur:
(A) The Victims Services Unit shall provide written notice of an open hearing before the Domestic Violence and Sexual Assault Advisory Council on the proposed fixed rates to each applicable contractor of record.
(B) The Domestic Violence and Sexual Assault Advisory Council shall conduct, and make a summary of, the scheduled Open Meeting.
(5) Consideration of the proposed fixed rate by the Attorney General 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 meeting in which the Attorney General will consider the uniform rates of reimbursement;
(B) A copy of the meeting agenda item(s) concerning the proposed rate(s); and

(C) All supporting documentation and materials regarding the reimbursement rates being proposed.

(6) The Attorney General 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 Attorney General when the rates are considered for adoption; and remain in effect until subsequent action by the Attorney General.

(7) All revisions shall be examined, proposed, considered and adopted pursuant to this section.

SUBCHAPTER 5. PROCEDURE IN INDIVIDUAL ADMINISTRATIVE PROCEEDINGS

75:1-5-1. Individual proceedings

Article II of the Administrative Procedures Act ("APA"), 75 O.S. § 308a, *et seq.*, governs individual proceedings by Office of the Attorney General for revocation, denial, suspension and non-renewal of certification or for reprimand of certified facilities.

75:1-5-2. Persons affected by individual actions

The Attorney General may bring an individual proceeding against any person or entity certified by the Attorney General for violation of Title 74 O.S § 18p-1 *et seq.* or the rules of the Attorney General as set forth in Title 75 of the Oklahoma Administrative Code.

75:1-5-3. Types of sanctions

The following administrative sanctions may be taken against a Respondent:

(1) Revocation of certification

(2) Reduction in certification

(3) Suspension of certification

(4) Reprimand

75:1-5-4. Petition and notice in individual proceedings

(a) **Petition and Notice.** In the event the Attorney General determines action should be taken, an individual proceeding may be initiated pursuant to the APA by filing a petition and notice with a Hearing Officer, as designated by the Attorney General, for the matter, 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 that 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 the Office of the Attorney General.

(b) **Request for hearing.** A request for hearing will be timely filed if said request is in writing and postmarked or hand delivered to the Hearing Officer within fifteen (15) 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 Attorney General or 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.

75:1-5-5. Service of petition and notice

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

(b) **Proof of service.** Proof of service shall be filed with the Hearing Officer.

(c) **Substitute service.** If the Office of the Attorney General is unable to obtain service on a Respondent, the petition and notice shall be mailed by regular mail to the last known address of the Respondent. The Office of the Attorney General shall file an affirmation service was attempted which will be deemed as proof of service.

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

75:1-5-5.1. Emergency actions

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

75:1-5-5.2. Procedures in individual proceedings generally

The order of procedure in all individual proceedings shall generally be governed by the APA.

75:1-5-5.3. Prehearing conference

A pre-hearing conference may be ordered and scheduled by the Attorney General or the Hearing Officer on his or her own motion or upon the request of any party. The Attorney General 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.

75:1-5-5.4. Continuances

(a) **Continuance by the Office of the Attorney General.** The Attorney General 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 Officer 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 Attorney General or the Hearing Officer determines that the public interest requires otherwise.

75:1-5-5.5. 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. Additionally, the Attorney General or the Hearing Officer may enter specific orders directing the conduct of discovery.

75:1-5-6. Protective orders

(a) The Attorney General 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 and shorten or extend the time within which any act shall be performed. Disclosure of client identification shall only be ordered pursuant to state and federal law.

(b) The Attorney General 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.

75:1-5-7. 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 Officer 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 Attorney General or the petitioner may seek an appropriate judicial proceeding to compel compliance by persons who fail to obey a subpoena, who refuse to be sworn or make an affirmation at a hearing or who refuse to answer a proper question during a hearing. The hearing shall proceed despite any such refusal but the Attorney General or the Hearing Officer may, in his discretion at any time, continue the proceedings as necessary to secure a court ruling.

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

75:1-5-8. Conduct and record of hearing

(a) **Open to public.** Every hearing before the Office of the Attorney General shall be conducted by the Attorney General or designated Hearing Officer. All hearings shall be open to the public unless a protective order is entered to uphold confidentiality laws; however, upon motion of a party to the proceeding, the Attorney General or 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 Attorney General or 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 the Office of the Attorney General 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 Attorney General or the Hearing Officer in a location designated by the Attorney General or the Hearing Officer. All pleadings, motions, orders and other papers submitted for filing in an individual proceeding shall be stamped with the date filed by the Attorney General or the Hearing Officer 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.

75:1-5-9. Hearing officers

(a) **Exercise of authority.** The Attorney General shall appoint at least one individual who is a licensed attorney to act

as the Administrative Hearing Officer in individual proceedings filed before the Office of the Attorney General. 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 witnesses;

(6) Rule on all motions, witness and exhibit lists, exhibits 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 ensure 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 orders.

(b) **Disqualification of hearing officer.**

(1) The Administrative Hearing Officer shall withdraw from any individual proceeding in which he or she 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.

75:1-5-10. Order of hearing

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

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

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

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

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

(4) Parties shall make opening statements where appropriate.

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

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

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

75:1-5-11. Order

(a) **Issuance and services of final order.** Not more than twenty (20) calendar days after conclusion of the hearing, the Hearing Officer shall issue a proposed order with findings of fact and conclusions of law. If the Office of the Attorney General proves its allegations in the petition and notice by clear and convincing evidence, the Attorney General shall issue an order sustaining the allegations. If the Office of the Attorney General does not meet its burden, the Attorney General shall issue an order in favor of the respondent(s). The Attorney General shall file and serve the final order on respondent(s) by certified mail, return receipt requested.

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

75:1-5-12. Settlement

Unless precluded by law, individual proceedings may be resolved by agreed settlement or consent order, with the concurrence of the Office of the Attorney General or the Hearing Officer.

SUBCHAPTER 7. CERTIFICATION AND DESIGNATION OF DOMESTIC VIOLENCE, SEXUAL ASSAULT, AND BATTERERS INTERVENTION SERVICES

75:1-7-1. Applicability of certification

This subchapter applies to all entities which are subject to certification by the Attorney General as set forth in 74 O.S. § 18p-6.

75:1-7-2. Purpose of certification

The purpose of certification is to assess a facility's responsibility to the client, and delivery of acceptable services to the client. Responsibility to the client 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.

75:1-7-3. Reviewing authority

The Attorney General may certify domestic violence shelters and programs, sexual assault programs, and batterers intervention programs and direct that such shall be carried out as stated in this subchapter.

75:1-7-4. Qualifications for certifications of facilities and programs and individuals

Qualifications for certification are compliance with applicable Standards and Criteria as set forth in Chapter 15 of OAC Title 75 regulating Standards and Criteria for Domestic Violence, Sexual Assault, and Batterers Intervention Services.

75:1-7-5. Procedures for application for certification

(a) Applications for certification as a domestic violence shelter or program, sexual assault program or batterers' intervention program must be made to the Office of the Attorney General in writing on a form and in a manner prescribed by the Attorney General and include the following:

(1) A fully completed 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 Office of the Attorney General.

(b) The following fees are required: Applicants for domestic violence shelters or programs, sexual assault programs and batterers intervention programs shall submit $150.00 with an initial application and $150.00 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 the Office of Attorney General, Victims Services Unit.

(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 new service location or change its current service location, the facility must submit an application on a form and in a manner prescribed by the Victims Services Unit of the Office of the Attorney General, the required documentation and fee. Approval may be granted by the Attorney General upon submission and approval of the required documentation to the Victims Services Unit. The Victims Services Unit may conduct a visit of the facility in accordance with 75:1-7-8. The required written documentation or supporting evidence includes, but is not limited to:

(1) a completed application;

(2) fire & safety inspection;

(3) facility policies and procedures; and

(4) zoning compliance.

(f) 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 Victims Services Unit of the Office of Attorney General.

75:1-7-6. Procedures for completion of certification process

(a) **Certification process.** Completion of the certification process will be done in cooperation between the applicant and certification team established and assigned by the Victims Services Unit of the Office of Attorney General, and consists of:

(1) a review of all application materials;

(2) a site review of the facility and completion of the applicable site visit protocol;

(3) a review of all applicable records;

(4) preparing certification reports for applicants;

(5) reviewing and approving any needed plans of correction;

(6) follow-up site reviews; and

(7) presentation by Victims Services Unit staff of the review results and associated recommendations to the Attorney General.

(b) **Initial applications.** All initial applications for certification shall be reviewed for completeness by Victims Services Unit staff. If the application is deemed complete, site review of the facility or program will be scheduled. If the applicant is cited for deficiencies of 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 and a notice of denial of the certification application shall be sent to the applicant by the Attorney General. 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 certification and a recommendation of revocation of the existing certification will be made to the Attorney General. In such case, re-application for certification shall

be made in accordance with the requirements of 75:1-7-6 and 75:1-7-11. If the applicant requests withdrawal of the certification status because of the circumstances cited above, the applicant may reapply three (3) months after receipt of the written request by the Victims Services Unit.

(d) **Renewal applications.**

(1) The Victims Services Unit 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 within forty-five (45) days before the expiration of its certification.

(3) Renewal applications for certification shall be reviewed for completeness by Victims Services Unit staff. If the facility is cited for deficiencies on 50% or more of the applicable standards and rules based on the site review findings, a plan of correction will not be requested and revocation of the certification status will be recommended to the Attorney General.

(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 be made to the Attorney General.

(e) **Site reviews.**

(1) Initial, renewal or follow-up site reviews, based on the current certification status of the applicant, will be scheduled by designated representatives of the Victims Services Unit at each location or site of the applicant. The review will be conducted by the assigned certification team or a certification team member.

(2) The follow-up site review to Conditional Certification will be conducted to review implementation of the plan of correction to ensure cited deficiencies have been corrected or to demonstrate continued correction and compliance with the previously cited deficiencies. Failure to comply with applicable rules and implement the plan of corrections shall result in a recommendation that Certification be denied and Conditional Certification status be revoked.

(3) The follow-up site visit to Temporary Certification will be conducted on standards not applicable during the initial certification visit, implementation of the plan of correction to ensure cited deficiencies have been corrected or to demonstrate continued correction and compliance with the previously cited deficiencies, and a review of a minimum of five (5) records. Failure to comply with applicable rules and implement the plan of correction shall result in a recommendation that Certification be denied and Temporary Certification status be revoked.

(4) A Site Review Protocol shall be completed during each site visit. Protocols shall contain the current Standards and Criteria applicable to the facility.

(A) A facility must be prepared to provide evidence of compliance with each applicable standard.

(B) In the event the reviewer(s) identifies some aspect of facility operation that adversely affects client safety or health, the reviewer(s) shall notify the facility director and appropriate Victims Services Unit staff. An immediate suspension of certification may be made by the Attorney General.

(f) **Deficiencies.** A deficiency shall be cited for a failure to comply with each rule.

(g) **Report to applicant and plan of correction.**

(1) During the course of the certification process, and prior to determination of certification status, Victims Services Unit staff shall report the results of the 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 Attorney General. Failure to submit the required plan of correction within two (2) weeks of the receipt of the Certification Report may result in denial of the certification application. In such case, re-application will be accepted after three (3) months from the date of issuance of the notification of denial from the Attorney General. 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, and the application will be denied.

(h) **Notification of Victims Services Unit recommendation for certification.**

(1) After completion of the site review and report on the Application for Certification, Victims Services Unit staff shall prepare a recommendation on the certification status or application for the Attorney General.

(2) Prior to the Victims Services Unit staff's presentation of its recommendation of an applicant's certification to the Attorney General, the Victims Services Unit staff shall notify the applicant of the recommendation.

(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 75:1-7-9 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 Attorney General 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 at least 51% but less than 100% of the applicable rules and will be given an opportunity to correct deficiencies.

(D) **Temporary Certification.** Facility is in compliance with at least 51% but less than 100% of the applicable rules and will be given an opportunity to correct deficiencies.

(i) **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 applicable records.

(2) The facility must comply with the requirements cited in 75:1-7-6 to continue the certification process.

(3) If the applicant achieves less than 100% compliance, full certification must be achieved 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 75:1-7-6 shall apply. A recommendation for Certification for one (1) year will be made to the Attorney General.

(j) **Actions on certification applications.** Victims Services Unit staff shall make one of the following recommendations to the Attorney General:

(1) Certification with Commendation;

(2) Certification;

(3) Conditional Certification;

(4) Temporary Certification

(5) Probationary Certification; or

(6) Revocation or Denial.

(k) If the Attorney General approves a recommendation to revoke certification, an individual proceeding shall be initiated pursuant to the Administrative Procedures Act.

75:1-7-7. Duration of certification status

(a) Certification status of either "Certification with Commendation" or "Certification" shall be for the period of three (3) years.

(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.

(c) Temporary Certification granted to applicants for initial certification shall be for a period not to exceed six (6) months. During that period, a follow-up site review will be conducted.

(d) Certification, Conditional, or Temporary Certification granted to an applicant shall become effective upon approval of the Attorney General.

(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 fewer 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 re-certified.

(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 Office of the Attorney General 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, revoked or not renewed with the basis for such action being delineated in Section 75:1-7-9 of this Subchapter.

75:1-7-8. Site reviews

The Victims Services Unit may conduct a site review or visit or an investigation, which may or may not be announced. Reasons for such review include but are not limited to:

(1) determination of correction of cited deficiencies;

(2) receipt of a complaint;

(3) change in ownership, management or location;

(4) establishment of a new service location;

(5) substantial change in either the service provided or new service(s) initiated;

(6) substantial turnover in staff at the executive or professional level;

(7)change in statutorily required licensure status; and

(8)change in external accreditation status.

75:1-7-9. Basis 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 basis:

(1) failure to comply with certification standards;

(2) failure to comply with appropriate statutory licensing provisions;

(3) violation of client rights or client confidentiality;

(4) endangerment of the safety, health, and/or the physical or mental well-being of a client 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, potential client, 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; or

(9) any other just cause.

(b) Determinations to initiate proceedings for suspension or revocations are made by the Attorney General.

(c) The facility's certification status continues unless the facility fails to timely file a written request for a hearing as cited in OAC 75:1-5-4 or an order sustaining the allegations made by the Attorney General is issued.

75:1-7-10. Contingency for non-action by the Attorney General

In the event the Attorney General is unable for any reason to consider the certification in a timely manner, any current certification status shall be automatically extended unless to do so would endanger the health, welfare and safety of clients, and there would be a danger of imminent harm.

75:1-7-11. Reapplication following denial, suspension, revocation or denial of certification

Reapplication for consideration of certification for any program for which certification has been suspended, revoked, denied or not renewed will not be accepted or considered unless at least three (3) months has passed since issuance of a Final Order of suspension, revocation, denial or nonrenewal.

[OAR Docket #06-1114; filed 5-26-06]

TITLE 75. ATTORNEY GENERAL CHAPTER 15. STANDARDS AND CRITERIA FOR DOMESTIC VIOLENCE, ~~AND~~ SEXUAL ASSAULT AND BATTERERS INTERVENTION PROGRAMS

[OAR Docket #06-1115]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 15. Standards and Criteria For Domestic Violence and Sexual Assault Programs [AMENDED]
AUTHORITY:
Office of the Attorney General; 74 O.S., Sections 18p-1 et seq.
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Chapter 15. Standards and Criteria For Domestic Violence and Sexual Assault Programs [AMENDED]
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Register Publication:
23 Ok Reg 339
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05-1378
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Pursuant to Title 74 O.S. § 18p-6, the Attorney General is required to adopt and promulgate rules and standards for certification of domestic violence programs and for private facilities and organizations which offer domestic and sexual assault services in this state. These rules set forth the requirements which are necessary to provide services pursuant to 74 O.S. § 18p-1 et seq. and to meet the responsibilities related to oversight, management, evaluation, performance improvement, and auditing of domestic violence and sexual assault services in this state.
CONTACT PERSON:
Susan Damron Krug (405) 522-0042

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING PERMANENT RULES ARE CONSIDERED PROMULGATED AND EFFECTIVE UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

75:15-1-1. Purpose

This chapter sets forth the rules, including standards and criteria, used in certifying all domestic violence, batterer's intervention and sexual assault programs and shelters (~~43A O.S., § 3-314.1~~ 74 O.S. § 18p-6). The rules regarding factors relating to the certification processes including, but not necessarily limited to, applications, fees, requirements for and administrative sanctions, are found in OAC Title ~~450~~ 75, Chapter 1.

75:15-1-2. Definitions

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

"Admission" means to accept a client for services or treatment.

"Advocacy" means the assistance provided which supports, supplements, intervenes and/or links the client with the appropriate service components. This can include medical, dental, financial, employment, legal and housing assistance.

"Advocate" means a person, providing support to ensure clients receive appropriate services.

"Batterer" means a person, male or female, who perpetrates domestic violence, stalking or other harassment against present or past intimate partners, another adult, emancipated minor or minor child, who are family or household members or who are or were in a dating relationship.

"Batterer~~'~~s intervention" means services provided to batterers, or perpetrators of domestic violence ~~or abusers~~ which holds a batterer accountable for his or her abusive behavior, provides consequences for engaging in violent or abusive behavior, provides monitoring of batterer's behavior, and requires him or her to change his or her behavior and attitudes and is also protective of the victim(s). Anger control or management alone is not synonymous with batterer~~'~~s intervention.

"Business day" shall mean a calendar day other than a Saturday, Sunday, or state holiday. In computing any period of time where the last day would fall on a Saturday, Sunday, or state holiday, the period shall run until 5:00 o'clock p.m. of the next business day.

"Case consultation" means review of a client's case by the primary service provider and other program ~~staff providers~~ personnel, consultants or both.

"Case management" means planned linkage, advocacy and referral assistance provided in partnership with an individual to support that individual in implementing an empowerment plan developed with and approved by the individual and staff. The plan must demonstrate the recipient's need for specific services provided. The service provider must be a Certified Domestic and Sexual Violence Response Professional (CDSVRP) certified by the Oklahoma Coalition Against Domestic Violence and Sexual Assault.

"Certified batterer intervention program" or **"Certified treatment program for batterers"** means a status which is granted to an entity by the Oklahoma Attorney General, and indicates approval to provide batterers intervention services and treatment programs pursuant to 74 O.S. § 18p-6. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

"Certified Domestic and Sexual Violence Response Professional" means a professional certified by the Oklahoma Coalition Against Domestic Violence and Sexual Assault.

"Certified domestic violence and sexual assault program" or **"Certified DV / SA program"** means a status which is granted to an entity by the Oklahoma Attorney General, and indicates approval to provide domestic violence and sexual assault services pursuant to 74 O.S. § 18p-6. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

"Certified domestic violence shelter" means a status which is granted to an entity by the Oklahoma Attorney General, and indicates approval to provide shelter services to victims of domestic violence and sexual assault pursuant to 74 O.S. § 18p-6. In accordance with the Administrative Procedures Act, 75 O.S. § 250.3(8), certification is defined as a "license."

"Child" or **"Children"** means any individual from birth to eighteen years of age.

"Client" means an individual, adult or child, who has applied for, is receiving or has received assistance or services of a DV/SA or batterer's program.

"Client record" means written information including assessment information, description of services provided services plan, and other information on an individual client.

"Community" means the people, groups, agencies or other facilities within the locality served by the program.

"Consultation" means a formal and structured process of interaction between ~~staff member(s)~~ personnel or unrelated individuals, groups or agencies for the purpose of problem solving or enhancing their capacity to serve clients, manage programs or both.

"Contract" means a formal document adopted by the governing authority of the program and any other organization, agency, or individual that specifies services, personnel or space to be provided to the program and the monies to be expended in exchange.

"Counseling" means a method of using various commonly acceptable treatment approaches provided face-to-face by qualified professional staff with clients in individual, group or family settings to promote positive emotional or behavioral change. Counseling is goal directed and utilizes techniques such as cognitive behavioral treatment, narrative therapy, solution-focused brief therapy, psycho-educational interventions or another widely accepted theoretical framework for treatment.

"Court advocate" means a volunteer or ~~staff member~~ personnel whose duties are to provide support, information, and advocacy in the court system for victims of domestic violence or sexual assault.

"Crisis intervention" means an immediately available service to meet the psychological, physiological or safety aspects of ~~mental health, alcohol and drug or~~ domestic violence or sexual assault related crises ~~and are~~ in response to emergencies, to provide crisis resolution ~~and~~ to stabilize conditions and may include triage, assessment, screening, planning, intervention, referral and documentation.

"Critical incident" means an occurrence or set of events inconsistent with the routine operation of the facility, or the routine care of a ~~consumer~~ client. Critical incidents specifically include but are not necessarily limited to the following: adverse drug events; self-destructive behavior; deaths and injuries to clients, ~~staff~~ personnel, volunteers and visitors; incidents involving medication ~~errors~~; neglect or abuse of a client; fire; unauthorized disclosure of information; damage to or theft of property belonging to a client or the facility; other unexpected occurrences; or events potentially subject to litigation. A critical incident may involve multiple individuals or results.

"Direct services" means services delivered by a staff member or volunteer, in direct contact with a client or client's child, including child care and telephone contact.

"Director" means the person hired by the governing authority to direct all the activities of the organization.

"DV/SA" means domestic violence and sexual assault.

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

"Domestic violence" means assaultive or coercive behaviors, including physical, sexual and psychological attacks and economic coercion, against another adult, emancipated minor

or minor child, who are family or household members or who are or were in a dating relationship.

"Education" means the dissemination of relevant information specifically focused on increasing the awareness of the community and the receptivity and sensitivity of the community concerning domestic violence, sexual assault or batterer's intervention and other related problems and services and may include a systematic presentation of selected information to impart knowledge or instructions, to increase understanding of specific issues or programs, to examine attitude or behaviors and stimulate social action or community support of the program and its ~~consumers~~ clients.

"Emergency services" or **"crisis services"** means a twenty-four (24) hour capability for assessment, intervention and resolution of a client crisis or emergency that is provided in response to unanticipated, unscheduled emergencies requiring prompt intervention to resolve immediate, overwhelming problems that severely impair the individual's ability to survive or maintain in the community.

"Emergency transportation" means transportation for a victim of DV/SA to a secured identified location at which emergency services or crisis services can be provided.

"Executive director" means the person in charge of a facility as defined in this section.

"Facility" means the physical location(s) of a certified program governed by this chapter of Title ~~450~~ 75.

"Family" means the children, spouse, parents, brothers, sisters, other relatives, foster parents, guardians and others who perform the roles and functions of family members in the lives of clients.

"Governing authority" means a group of persons having the legal authority, and final responsibility for the operations and functions of the entire DV/SA program, shelter, or batterers intervention program in and of all geographical locations and administrative divisions.

"Group counseling" means a method of using various commonly acceptable treatment approaches provided face-to-face by qualified staff with not more than ~~ten (10)~~ twelve (12) clients to promote positive emotional or behavioral change. Counseling is goal directed and utilizes techniques such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy psycho-educational interventions or another widely accepted theoretical framework for treatment.

"Guardian" means an individual who has been given the legal authority for managing the affairs of another individual.

~~**"Host family"** or **"Sponsor family"** means an individual or family providing safe home services through a formal agreement with a Certified DV/SA Program.~~

"Indirect services" means services delivered by a staff member or volunteer, that does not involve direct services with a client or client's child.

"Initial contact" means a person's first contact with the program or facility ~~usually requests for~~ requesting information or service by telephone or in person.

"Intake" means the written information about a client as a basis for assessment or services, obtained by the program at time of admission.

~~**"Integrated Client Information System"** or **"ICIS"** is a comprehensive management information system based on national standards for mental health and substance abuse databases. It is a repository of diverse data elements that provide information about organizational concepts, staffing patterns, consumer profiles, program or treatment focus, and many other topics of interest to clinicians, administrators and consumers. It includes unique identifiers for agencies, staff and consumers that provide the ability to monitor the course of consumer services throughout the statewide DMHSAS network. ICIS collects data from hospitals, community mental health centers, substance abuse agencies, domestic violence service providers, sexual assault service providers, residential care facilities, prevention programs, and centers for the homeless which are operated or funded in part by DMHSAS.~~

"Licensure" means the official or legal permission to persons or health facilities meeting qualifications to engage in a given occupation or use a particular title.

"Medical care" means those diagnostic and treatment services which, under the laws of the jurisdiction in which the program is located, can only be provided or supervised by a licensed physician.

"Medication" means any prescription or over-the-counter drug, that is taken as prescribed or directed.

"Mental health services" means a range of diagnostic, therapeutic, and rehabilitative services used in treating mental illness or emotional disorders, including substance abuse.

"Neglect" means failing to provide adequate personal care or maintenance, or access to medical care which results or may result in physical or mental injury or harm to a client.

"OAG" means the Office of the Attorney General.

"Objectives" means a specific statement of planned accomplishments or results which are quantitative, qualitative, time-limited and realistic.

~~**"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.

"Oklahoma Victim Information System" or **"OVIS"** is a data management information system used as a repository of diverse data elements that provide information to monitor the course of services and allow each user service provider to generate an invoice pursuant to their fee schedule for reimbursement of contracted services. OVIS collects data from domestic violence service providers and sexual assault service providers which are certified by the Office of the Attorney General.

"Operation" means that clients are receiving services provided by the program.

"Personnel record" means a file containing the employment history and actions relevant to individual ~~employee~~ personnel and volunteer activities within an organization such as application, evaluation, salary data, job description, citations, credentials, etc.

"Persons with special needs" means persons with a condition which is considered a disability or impairment under the "American with Disabilities Act of 1990" including, but not limited to the deaf/hearing impaired, visually impaired, physically disabled, developmentally disabled, persons with disabling illness, persons with mental illness. See "Americans with Disabilities Handbook," published by U.S. Equal Employment Opportunity Commission and U.S. Department of Justice.

"Policies" means statements of program intent, strategy, principle, or rules for providing effective and ethical services.

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

"Professional Staff" means an individual who:

(A) Meets the requirements under Oklahoma statutes to be licensed as:

(i) a licensed physician;

(ii) a licensed registered nurse;

(iii) a licensed professional counselor;

(iv) a licensed clinical social worker;

(v) a licensed marriage and family therapist;

(vi) a licensed behavioral practitioner; or

(vii) a licensed psychologist, or

(B) Meets the academic requirements for one of the above, has an approved application for licensure in Oklahoma or is actively engaged in the applicable licensure process including active and documented supervision by an approved supervisor or is a practicum student or intern in an accredited program.

"Program" means a set of activities designed and structured to achieve specific objectives relative to the needs of the clients.

"Program evaluation" means the documented assessment activities, performed internally or externally, of a program or a service and its staff, activities and planning process to determine whether program goals are met, staff and activities are effective, and what effect, if any a program or service has on the problem which it was created to address or on the population which it was created to serve.

"Program goals" means broad general statements of purpose or intent.

"Rape crisis response services" means "sexual assault services" as defined in this section.

"Safe Home Provider" means an individual or family providing safe home services through a formal agreement with a Certified DV/SA Program.

"Screening" means the process of determining, preliminarily the nature and extent of a person's problem in order to link the person with appropriate and available services to be provided.

~~**"Sentinel event"** is a type of critical incident that is an unexpected occurrence involving the death or serious physical or psychological injury to a consumer, or risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or risk thereof" includes a variation in approved processes which could carry a significant chance of a serious adverse outcome to a consumer. These events signal the need for immediate investigation and response. Sentinel events include, but are not limited to: suicide, homicide, criminal activity, assault and other forms or violence, including domestic violence or sexual assault, and adverse drug events resulting in serious injury or death.~~

"Service agreement" means a written agreement between two or more service agencies or service agencies and individual service providers defining the roles and responsibilities of each party. The purpose of service agreements is to promote coordination and integration of service programs for the purpose of curbing fragmentation and unnecessary service duplication in order to assure a continuation of services.

"Service note" means the documentation of the time, date, location and description of services provided, and signature of staff providing the services.

"Service plan" means a plan of action developed and agreed upon by the client and service provider that contains service appropriate goals and objectives for the client.

"Sexual assault services" means personal advocacy and support services provided to victims of rape and sexual assault in settings such as law enforcement, medical settings or program offices.

"Shelter services" means a cooperative living arrangement in a secure residential setting with counseling provided by qualified staff, or support and client advocacy for victims of domestic violence and their dependents.

"Staff" means ~~employees~~ personnel that function with a defined role within the program.

"Support" or **"Supportive Services"** means services provided to victims of domestic violence/sexual assault and/or their families which augment or complement a defined service plan.

"Transitional living services" means housing maintained and operated by a ~~certified~~ Certified domestic violence and sexual assault program.

"Universal precautions for transmission of infectious diseases" means those guidelines promulgated by the U.S. Occupational Health and Safety Administration which are designed to prevent the transmission of Human Immunodeficiency Virus, hepatitis and other infectious diseases.

"Update" means a dated and signed review of a report, plan or program with or without revision.

"Victim recovery services" mean a face-to-face service, provided one on one by qualified staff to groups or individuals to maintain or develop skills necessary to perform activities of daily living and successful integration into community life. This service includes educational and supportive services regarding independent living, self care, social skills regarding development~~,~~ and lifestyle changes.

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

75:15-1-3. 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.

75:15-1-4. Annual review of standards and criteria

This chapter shall be reviewed annually by the ~~ODMHSAS~~ Office of the Attorney General.

75:15-1-5. Batterers Intervention Programs

All Certified Batterers Intervention Programs shall comply with the provisions of Subchapters 1, 4, 13, 15, and 17.

75:15-1-6. Service Programs

(a) All ~~certified~~ Certified DV/SA service providers shall provide one (1) or more of the following service programs:

(1) Shelter services program;

(2) Crisis intervention services program;

(3) Transitional living services program;

(4) Safe home services program;

(5) Batterer's intervention services program; and

(6) Sexual assault services program.

(b) All ~~certified~~ Certified DV/SA service providers may provide public education services in which informational presentations are made, on request or by agreement, to community groups, including schools, social service clubs, faith based organizations, and other groups. School faculties, social services provider staff, medical personnel, local law enforcement personnel, and court system ~~staffs~~ personnel are provided with education in the dynamics of abuse and needs of victims. Information and interviews are made available to the media. Advertising is provided through service area media and public activities. These public education services may be provided to the community and area covered by the DV/SA service provider. Support services shall be provided by trained staff or volunteers through a screening/referral system, and services shall be in place to respond to any resulting inquiries.

(c) All ~~certified~~ Certified DV/SA service providers shall provide counseling or support and advocacy services. Group and/or individual counseling or support services shall be made available before or after normal ~~working~~ business hours (8 am to 5 pm), if needed by clients. These services shall minimally provide the following:

(1) A publicly accessible facility with offices, individual and group counseling space to provide services.

(2) Advocacy services, both in person and by telephone, either in the locations of other community services and systems, or in the program's offices. Other locations include but are not limited to those necessary to provide court advocacy services to clients.

(3) Current service agreement to be renewed every three (3) years with available community services to provide access to a continuum of needed services for the client. If unable to establish a current service agreement with all appropriate resources in the community, efforts to do so or reasons/opinions why this is not or cannot be done shall be documented.

(4) A resource document of local, area, or state resources to facilitate referrals for clients.

(5) Service approaches that focus on the empowerment of victims to access needed resources and make healthy and safe decisions for themselves and dependents.

(d) All DV/SA service providers that are certified as the following must serve victims and their dependents or family members of domestic violence and sexual assault:

(1) shelter services program

(2) crisis intervention services program

(3) transitional living services program

(4) safe home services program

(e) All DV/SA service providers that are certified as the following must also provide sexual assault services programs in order to serve victims of sexual assault:

(1) shelter services program

(2) crisis intervention services program

(3) transitional living services program

(f) All ~~certified~~ Certified DV/SA service providers shall maintain an atmosphere and provide services that are free from all forms of unlawful discrimination based on race, sex, religion, color, age, national origin, and/or disability (including physical, mental illness, and substance abuse).

(g) Compliance with ~~4507~~75:~~19~~15-1-6 shall be determined by a review of the program's policy and procedures, and any other relevant documentation provided by the program.

SUBCHAPTER 3. DOMESTIC VIOLENCE AND SEXUAL ASSAULT PROGRAMS

PART 1. REQUIRED DV/SA SHELTER PROGRAM COMPONENTS

75:15-3-1. Shelter services program

(a) Each shelter program shall provide long-term (thirty [30] days or more) shelter services~~;~~ and have written policy and procedures governing the maintenance of the facilities, staffing to provide services twenty-four (24) hours per day, seven (7) days per week, personnel training, record-keeping and operational methods to provide the following services:

(1) A group living program providing room, board, bathing and laundry facilities, necessary clothing and toiletries for victims and their children, advocacy, support or counseling, transportation, and a play area for children.

~~(2) Emergency transportation for victims which shall be available within 30 minutes of a client's request for transport in urban areas and no longer than two (2) hours in rural areas. This shall not require service providers to be placed in a situation that could result in injury.~~

(~~3~~2) Shelters shall be staffed at all times when clients are in residence. When there are no clients in residence, each

shelter program must assure availability for immediate contact or services.

(~~4~~3) Shelter or program staff shall provide services to children accompanying the primary victims. These services shall minimally address the effects of violence in their lives and include the following:

(A) assessment for services and needs;

(B) a specific safe, protected play area for children;

~~(C) case management;~~

(~~D~~C) advocacy with community systems;

(~~E~~D) referral to community resources;

(~~F~~E) parenting education for clients, if applicable; and

(~~G~~F) age appropriate curricula, children's groups, and referrals for needed services.

(~~5~~4) The shelter's policy shall have written procedures regarding the supervision of children.

(~~6~~5) Shelter programs shall provide screening, referral and linkage to clients and callers to appropriate community resources, to include assistance in making initial contact.

(~~7~~6) Program staff shall provide advocacy, individual support or counseling, support groups, victim recovery services and 24-hour crisis intervention services for shelter residents.

(~~8~~7) The shelter program shall provide transportation or access to transportation for necessary or emergency services. This shall not require service providers to be placed in a situation that could result in injury.

(~~9~~8) The shelter program shall maintain cooperation/liaison with the local school system.

(~~10~~9) The shelter program shall maintain service agreements with a continuum of available community services and regional services which may be needed by the residents of the shelter.

(~~11~~10) The shelter has a written plan to address "reasonable accommodation" for people with special needs.

(~~12~~11) The shelter maintains written admission, exclusion, and involuntary discharge criteria.

(~~13~~12) Each shelter program must ensure to the best of their ability the safety, security, and confidentiality of clients and the location of the shelter.

(b) Compliance with ~~4507~~75:~~19~~15-3-1 shall be determined by a review of policy and procedures; documentation of training; client records; service agreements; and other supporting documentation.

75:15-3-2. Crisis intervention services program

(a) Each certified DV/SA crisis intervention services program shall maintain facilities, staffing, personnel ~~staff~~ training, documentation, and operational methods to provide the following crisis intervention services, including, but not limited to:

(1) Twenty-four (24) hour crisis telephone services staffed by trained staff or volunteers,24-hour immediate, direct access to crisis advocates. Pagers, answering machines or answering services shall not be sufficient to meet this requirement. Follow-up services shall be offered to all victims if victim safety is not compromised. If follow-up services are not provided the reason(s) shall be documented.

(2) ~~Emergency transportation available for victims as follows:~~ The crisis intervention program shall provide transportation or access to transportation for necessary or emergency services. This shall not require service providers to be placed in a situation that could result in injury.

~~(A) within 30 minutes of client request in urban areas; and~~

~~(B) within 2 hours of client request in rural areas.~~

~~(C) This shall not require service providers to be placed in a situation that could result in injury.~~

(3) Cooperation with law enforcement to provide assistance to the victim and accompanying dependent(s).

(4) Emergency housing such as hotel or motel available for victims and their dependent(s).

(5) Services shall minimally include:

(A) crisis intervention to ensure the safety of the victims;

(B) provision of transportation to a safe place;

(C) provision of a trained staff person or volunteer to talk to the victim;

(D) provision of advocacy and referral to assist the victims in obtaining needed services or resources; and

(E) arrangement for safe shelter, food, clothing, and incidentals needed by victim/dependents.

(b) All certified DV/SA crisis intervention services programs shall assess the needs of the children accompanying primary victims and provide services to address the effect of violence in their lives including but not limited to:

(1) a specific safe, protected play area for children;

(2) advocacy with community systems;

(3) referral to community resources;

(4) parenting education for clients, if applicable; and

(5) age appropriate curricula, children's groups, and referrals for needed services.

(c) Compliance with ~~4507~~75:~~19~~15-3-2 shall be determined by a review of program policy and procedures; client service records; contact logs; documentation of training; contract or agreement for lodging; or other supporting documentation of the program.

PART 2. OTHER SERVICE COMPONENTS

75:15-3-7. Transitional living services program

(a) The program shall:

(1) maintain facilities,

(2) define and maintain needed staffing,

(3) establish and implement policies and procedures that include staffing, documentation and operational methods to provide these transitional living services, and shall meet the following criteria:

(A) The program shall maintain homes, apartments, or other residential living environments suitable for survivors of domestic and sexual violence, and dependents, if applicable, and which provide the

reasonable safety and privacy needed by this population. The program shall provide access to necessary furniture and equipment.

(B) The program shall include heating and refrigerated cooling systems to maintain a reasonable comfort level.

(C) Each transitional living site shall have an annual fire and safety inspection by the local or state fire department.

(D) Supportive services for residents are available through the twenty-four (24) hour program hotline by trained staff or volunteers.

(E) The program maintains service agreements, to be renewed at least every three years with available community services for the provision of a continuum of services for clients.

(F) The program shall maintain a resource manual of local, area, and state resources available for clients.

(G) The program shall assign staff as the advocate or liaison for the clients residing in the transitional living program(s). This person, or a crisis line staff person, shall be available for emergencies at all times.

(H) The program shall maintain written criteria for the following services:

(i) Admission to the transitional living program;

(ii) Continuation of transitional living residence; and

(iii) Discharge from the transitional living program.

(I) The program shall provide weekly support groups for transitional living residents.

(J) The program shall provide at least one 30 minute face to face service contact per week with each transitional living residents.

(K) Advocacy is provided for the residents as needed.

(b) All certified DV/SA transitional living services programs shall assess the needs of the children accompanying primary victims and provide services to address the effect of violence in their lives including but not limited to:

(1) services offered either in the residential setting or in another setting as needed;

(2) a specific safe, protected play area for children;

(~~4~~3) advocacy with community systems;

(~~5~~4) referral to community resources;

(~~6~~5) parenting education for clients, if applicable; and

(~~7~~6) age appropriate curricula, children's groups, and referrals for needed services.

(c) Compliance with ~~450~~75:~~19~~15-3-7 shall be determined by a review of program policy and procedures; program staffing patterns; client records; or other program documentation.

75:15-3-8. Safe home services program

(a) Safe homes are private dwellings available for the temporary housing of victims of domestic violence or sexual assault to ensure safety of victims and their families until other housing arrangements can be made. Each certified DV/SA provider shall have policy and procedures to maintain facilities, staffing, personnel training, documentation, and operational methods to provide confidential housing 24 hours a day, 365 days a year. Certified DV/SA providers ~~which use~~ that have a formal agreement for a safe home~~s~~ shall ~~maintain the operational methods, policy and procedures, staffing, and documentation to meet the following:~~

(1) ~~Safe homes are private dwellings arranged for and regularly monitored by the certified DV/SA provider via on-site observation at least monthly when clients are in residence.~~ assure that each safe home provides residents with access to minimum necessities including bedding, clothing, articles for grooming and personal hygiene, and food;

(2) ~~The certified DV/SA provider shall maintain service agreements, to be renewed at least every three years, with local or area services to provide a continuum of services to the client, as needed.~~ develop and disseminate to safe home providers and residents written rules, policies and procedures that include admission and exit criteria including security measures;

(3) ~~The certified DV/SA provider shall maintain a resource manual for the purpose of providing clients with needed referrals.~~ have written procedures for monitoring safe homes to ensure that the homes meet standards for cleanliness and safety;

(4) ~~The certified DV/SA provider shall have written admission and involuntary discharge criteria for clients using safe homes. And,~~ provide orientation to all clients and require they sign a contract acknowledging they have read and understand the rules of their stay;

(5) ~~The certified DV/SA provider shall provide general non-residential client services to the client, as needed.~~ provide access to general advocacy and support services and referral to other services and resources where necessary;

(6) assign an advocate or liaison for clients. This person, or a crisis line staff, shall be available for emergencies and support at all times, and

(7) provide at least one 30 minute face-to-face service contact per week with each safe home resident.

(b) ~~Compliance with 450:19-3-8 shall be determined by a review of program policy and procedures; documentation of staff training and experience; program staffing patterns; client records; or other program documentation, as applicable.~~ The certified DV/SA program shall establish criteria to screen potential safe home providers. Screening will include an application with references, an interview, and a site visit. Each Safe Home will be reassessed annually.

(c) All safe homes must be supervised by the certified DV/SA program who will conduct on-site observations at least monthly when clients are in residence.

(d) A program shall have a written agreement with each safe home provider that outlines specific responsibilities of both the program and the provider to include expectations and limitations (e.g., no babysitting or individual advocacy) and compliance with confidentiality. The agreement shall clearly state

that the program will not be held liable for damage incurred by the safe home provider. Both parties will sign the agreement.

(e) Compliance with 75:15-3-8 shall be determined by a review of program policy and procedures, program staffing patterns, client records, on site observation, and other program documentation, as applicable.

75:15-3-9. Batterer's intervention services program [REVOKED]

~~(a) Each certified batterer intervention services program shall have the policy, procedures, staffing, training, operational methods and facilities to meet the following requirements:~~

~~(1) Services shall be provided in a facility with offices available for private individual and group sessions.~~

~~(2) Services shall be provided to self or court referred batterers. Group services shall be the primary modality. Referral to domestic violence services is provided for the batterer's partner or victim, when possible.~~

~~(3) The focus shall be to eliminate violence within the home and assist the batterer in developing personal responsibility for his or her behaviors, understanding the fundamentals of anger and emotions, learning effective coping strategies and recognizing cyclic behavior. The service shall be based on non-victim blaming strategies.~~

~~(4) Anger control or management alone shall not be considered batterer's intervention.~~

~~(b) Education shall be provided to the batterer and shall minimally address:~~

~~(1) power and control issues;~~

~~(2) the sociocultural basis for violence;~~

~~(3) issues of sexism and gender role stereotyping;~~

~~(4) anger management;~~

~~(5) substance abuse and violence;~~

~~(6) communication;~~

~~(7) effective coping strategies;~~

~~(8) parenting; and~~

~~(9) effects of domestic violence on children.~~

~~(c) Services shall be provided during hours which make them available for clients whose work hours are between 8:00 A.M. and 6:00 P.M. Monday through Friday.~~

~~(d) The program shall maintain admission criteria for batterer intervention services.~~

~~(e) The program shall provide individual assessment sessions, crisis intervention and group sessions.~~

~~(f) Service policy shall not permit the substitution of individual counseling appointments for group participation.~~

~~(g) Group sizes shall be limited to not less than two (2) and not more than ten (10) clients.~~

~~(h) Discharge criteria shall be contingent on the satisfactory meeting of specific criteria by the participant, and NOT only upon the end of a specified period of time or a specified number of sessions.~~

~~(i) The assessment of risk of battering must be on-going and documented in the client record.~~

~~(j) Mandatory or joint participation shall not be required of the victim.~~

~~(k) Male and female batterers shall not be served, or counseled, in the same group or session, i.e., together.~~

~~(l) The program shall maintain annually renewed service agreements with appropriate referral sources such as, but not limited to:~~

~~(1) substance abuse;~~

~~(2) legal; and~~

~~(3) mental health services.~~

~~(m) In the case of court referred clients, the program shall liaison and coordinate with the judicial system, judge, or district attorney. The program shall develop a process for coordinating with and reporting to the courts, judge, probation officer, and/or district attorney.~~

~~(n) Victim safety.~~

~~(1) Whereas confidentiality is a fundamental underpinning of services for victims of domestic violence, limited confidentiality is critical in batterer intervention services. Victim safety shall supersede all consideration of batterer confidentiality.~~

~~(2) Appropriate releases shall be obtained to facilitate communication with the partner or victim; other needed community agencies; the law enforcement or judicial systems, to assure that sufficient information is obtained to increase partner or victim safety and to properly apprise all parties of services, including the victim, court personnel, law enforcement personnel, staff of other programs serving batterers and the staff of programs providing victims' services. The batterer's intervention program shall maintain contact with the victim at the victim's discretion, through a victim advocate/liaison from a DV/SA services program serving the victim.~~

~~(3) There shall be a written, cooperative, accountable working relationship between the batterer's intervention program, and the DV/SA providers that serve victims so potential victims and others are warned of imminent danger.~~

~~(4) At a minimum, partner or victim notification is required when:~~

~~(A) The batterer begins attending the intervention program;~~

~~(B) At the time the batterer terminates the intervention program for noncompliance;~~

~~(C) There is an imminent threat or danger to the victim's safety.~~

~~(5) The efforts to find and notify the batterer's partner or victim shall be documented.~~

~~(6) Collaboration shall be established with other ODMHSAS certified domestic violence/sexual assault programs, networks and coalitions which recognize and agree to the use of the expertise of these DV/SA program services for the partner or victim of batterer program participants. These service agreements shall be renewed annually.~~

~~(o) Batterer intervention programs shall not be less than 24 weeks in duration.~~

~~(p) Compliance with 450:19-3-9 shall be determined by a review of program policy and procedures; documentation of staff training and experience; client records; service referral agreements, cooperative and resource; and other program documentation.~~

75:15-3-10. Sexual assault services program

(a) The program shall minimally provide the following:

(1) Counseling or advocacy and support services shall be provided in the social service, legal, law enforcement or medical setting, in program offices or at any safe and appropriate site, as needed by the client.

(2) Twenty four (24) hours, seven (7) days per week access to these services through the program's crisis hotline.

(3) A twenty-four (24) hour hotline, crisis intervention, in-person advocacy as needed, active listening, or support by trained staff or volunteers with a knowledge of the issues and processes of sexual assault, rape trauma recovery, assessment, referral when indicated and family involvement where chosen by the victim.

(4) Needed clothing for the sexual assault victim.

(b) The program will also be part of a sexual assault response team in their service area, providing that there is a sexual assault response team in place.

(c) The program shall collaborate with other certified DV/SA providers in their service area.

(d) Compliance with ~~450~~75:~~19~~15-3-10 shall be determined by a review of program policy and procedures; staff and volunteer training manuals; staff training documentation; client records documentation; service agreements, or other supporting documentation of the program.

SUBCHAPTER 4. BATTERERS INTERVENTION PROGRAMS

75:15-4-1. Purpose

The purpose of this subchapter is to set forth the standards and criteria governing services provided by Certified batterers intervention programs. Certified batterers intervention programs must also comply with Subchapters 1, 13, 15, and 17.

75:15-4-2. Batterers intervention program

(a) Each certified batterer intervention program shall have the policy, procedures, staffing, training, operational methods and facilities to meet the following requirements:

(1) Services shall be provided in a facility with offices available for private individual and group sessions.

(2) Services shall be provided to self or court-referred batterers. Group services shall be the primary modality. Referral to domestic violence services is provided for the batterer's partner or victim, when possible.

(3) The focus shall be to eliminate violence within the home and assist the batterer in developing personal responsibility for his or her behaviors, understanding the fundamentals of anger and emotions, learning effective coping strategies and recognizing cyclic behavior. The service shall be based on non-victim blaming strategies.

(4) Anger control or management alone shall not be considered batterers intervention.

(b) Education shall be provided to the batterer and shall minimally address:

(1) power and control issues;

(2) the sociocultural basis for violence;

(3) issues of sexism and gender role stereotyping;

(4) anger management;

(5) substance abuse and violence;

(6) communication;

(7) effective coping strategies;

(8) parenting; and

(9) effects of domestic violence on children.

(c) Services shall be provided during hours which make them available for clients whose work hours are between 8:00 A.M. and 5:00 P.M. Monday through Friday.

(d) The program shall maintain admission criteria for batterer intervention services.

(e) The program shall provide individual assessment sessions, crisis intervention and group sessions.

(f) Service policy shall not permit the substitution of individual counseling appointments for group participation.

(g) Group sizes shall be limited to not less than two (2) and not more than twelve (12) clients.

(h) Discharge criteria shall be contingent on the satisfactory meeting of specific criteria by the participant, and NOT only upon the end of a specified period of time or a specified number of sessions.

(i) The assessment of risk of battering must be on-going and documented in the client record.

(j) Joint participation shall not be allowed of the victim as part of batterers intervention.

(k) Male and female batterers shall not be served, or counseled, in the same group or session, i.e., together.

(l) The program shall maintain annually renewed service agreements with appropriate referral sources such as, but not limited to:

(1) substance abuse;

(2) legal; and

(3) mental health services.

(m) In the case of court referred clients, the program shall liaison and coordinate with the judicial system, judge, or district attorney. The program shall develop a process for coordinating with and reporting to the courts, judge, probation officer, and/or district attorney.

(n) Compliance with 75:15-4-2 shall be determined by a review of program policy and procedures; client records; service referral agreements, and other program documentation.

75:15-4-3. Victim safety and confidentiality

(a) Victim safety.

(1) Whereas confidentiality is a fundamental underpinning of services for victims of domestic violence, limited confidentiality is critical in batterer intervention services. Victim safety shall supersede all consideration of batterer confidentiality.

(2) Appropriate releases shall be obtained to facilitate communication with the partner or victim; other needed community agencies; the law enforcement or judicial systems, to assure that sufficient information is obtained to increase partner or victim safety and to properly apprise all parties of services, including the victim, court personnel, law enforcement personnel, staff of other programs

serving batterers and the staff of programs providing victims' services. The batterer's intervention program shall maintain contact with the victim at the victim's discretion, through a victim advocate/liaison from a DV/SA services program serving the victim.

(3) There shall be a written, cooperative, accountable working relationship between the batterers intervention program, and the DV/SA providers that serve victims so potential victims and others are warned of imminent danger.

(4) At a minimum, partner or victim notification is required when:

(A) The batterer begins attending the intervention program;

(B) At the time the batterer terminates the intervention program for noncompliance;

(C) There is an imminent threat or danger to the victim's safety.

(5) The efforts to find and notify the batterer's partner or victim shall be documented.

(6) Collaboration shall be established with other domestic violence/sexual assault programs certified by the Attorney General, networks and coalitions which recognize and agree to the use of the expertise of these DV/SA program services for the partner or victim of batterer program participants. These service agreements shall be renewed annually.

(b) Certified batterer intervention programs shall not be less than 52 weeks in duration.

(c) Compliance with 75:15-4-3 shall be determined by a review of program policy and procedures; client records; service referral and cooperative agreements, and other program documentation.

75:15-4-4. Client records

(a) A certified batterers intervention program shall have and maintain a master client index system containing the client's name, and the program's discreet numerical or letter identifier. If the program is under contract with the Office of the Attorney General, the discreet identifier shall be the OVIS client identification.

(b) A certified program shall have written policy and procedures for correcting errors on record material by lining through, initialing both error and correction, and inserting the correct material either above the error or at the end of the entry. Further, the policy and procedures shall forbid the use of "white-out" or any action which obliterates the error.

(c) Compliance with 75:15-4-4 shall be determined by on-site observation, client records, policy and procedures and any other supporting program documentation.

75:15-4-5. Record content

(a) Client records shall contain, at a minimum, the following information:

(1) Intake and screening information:

(A) Client's name;

(B) Date of initial contact/intake;

(C) Pertinent medical information, including substance abuse;

(D) Emergency contact information;

(E) History/nature of abuse, and

(F) Name and contact information of victim(s) if known.

(2) Service notes, which shall minimally include:

(A) The time, date, location and description of services provided;

(B) The signature of staff providing the services; and

(C) A service note for each contact for services.

(3) Service plan focusing on victim safety and, well-being which shall minimally include:

(A) Goals and objectives of the client, which shall be developed and agreed upon between the client and staff; and

(B) Service plans and their updates signed and dated by the client and staff.

(4) Exit information, which shall minimally include:

(A) Documentation that the client participated in planning for his or her exit from the program;

(B) The reasons for the client's exit or departure; and

(C) Client and staff dated signatures or an explanation if staff were unable to obtain the client's signature.

(b) Each client record entry shall be legible, dated, and signed by the staff member making the entry.

(c) Client records for batterers intervention services shall conform to the following:

(1) An assessment of the client's needs shall be completed prior to initiating the intervention processes and shall include, but not be limited to:

(A) Current and past history of violence;

(B) Current lethality risk; and

(C) Drug and alcohol use/abuse screening which shall include, but not be limited to a substance abuse history.

(2) An individualized written client-contract shall be completed by the third (3rd) session; signed by the batterer; and shall include, but not be limited to:

(A) Attendance policy, including the length of intervention, minimum number of sessions required and the maximum length of time for completion of the required sessions.

(B) The criteria for suspension and termination.

(C) The program's rules.

(D) A written notice in bold type which specifies "Please be advised any reasonable knowledge or suspicion of illegal activities or bodily harm, or a threat of such, to the victim, her or his property, or to third persons, or any attempt, threat or gesture to commit suicide, or any belief that child abuse or neglect is present or has occurred, will be reported to the appropriate person(s) or authorities."

(E) A list of provider program expectations, such as participation, homework and that the batterer will be held accountable for all abusive and violent behavior.

(F) The batterer's responsibilities for safety planning, including, but not limited to, an awareness of abusive and violent behavior and patterns, e.g., time out procedures, procedures which inform the partner or victim appropriately and are not used to control her or him, logging or writing a journal of efforts to control behavior and nonviolence maintenance such as buddy telephone calls, additional support groups, relaxation and exercise, etc.

(G) Providing releases of information for collateral treatment, i.e., substance abuse or mental health treatment.

(3) A service plan shall be completed by the client and counselor or advocate by the third (3rd)session.

(4) A service plan review and update shall be completed every ninety (90)days.

(5) Service notes shall document the ongoing provision of educational components addressing the risk of battering and other violence.

(6) Service termination reports shall be completed for all types of conditions under which services are ended. Types and reasons for terminating services include:

(A) Rejection. Reasons for rejection shall be documented and include, but are not limited to: psychiatric history, including active or recent mental health related problems; criminal record of violent crimes; chemical dependency requiring completion of an inpatient or residential treatment program; or inability to function in a group due to limited mental cognitive abilities;

(B) Involuntary termination. Reasons for involuntary termination shall be documented and include, but are not limited to: recurrence of violence; arrest; absences from program sessions and activities; failure to actively participate in sessions attended; attending a session when under the influence of alcohol or drugs; violation of any rules of the treating program or violation of the client-contract; and

(C) Completion.

(7) Without jeopardizing the safety of the victim and with the written consent of the batterer, unless otherwise ordered by the court, a written report to the referring agent, the victim and the victim's advocate shall be submitted within seven (7) business days of the batterer's exit and shall include, but not be limited to:

(A) Summarize the services provided and the batterer's participation;

(B) The reason(s) for discharge or rejection;

(C) Recommendations;

(D) Involuntary termination reports shall include recommendations, which may include, but are not limited to, weekend incarceration, community service hours, probation violation determination, or return to the intervention program; and

(E) Efforts to notify the referring agent, the victim or the victim's advocate.

(8) Efforts to notify the referring agent, the victim or the victim's advocate shall be documented in the batterer's record without including any confidential victim identification information; and

(9) Copies of all service documentation and reports shall be kept in the batterer's file.

(d) Where required information is not obtained, efforts to comply with the requirements of this subsection shall be documented in the client record.

(e) Compliance with this 75:15-4-5 shall be determined by a review of client records for content, review of program policy and procedures; or other supporting program documentation.

75:15-4-6. Client confidentiality

(a) Case or client records, files or notes, of a batterers intervention program shall be confidential and shall only be released under certain prescribed conditions (74 O.S. § 18p-3).

(b) The program shall have written policy and procedures to ensure confidentiality of client information and identity and shelter location and govern the disclosure of information including verbal disclosure contained in client records.

(c) Compliance with 75:15-4-6 shall be determined by a review of the program's policy and procedures; and on-site observation of the handling of client records.

75:15-4-7. Physical safety and integrity of client records

(a) Client records shall be maintained in a locked and secure manner. The program shall have written policies and procedures to safeguard the record and information contained in the record against loss, theft, defacement, tampering, or unauthorized access or use.

(b) Compliance with 75:15-4-7 shall be determined by a review of the program policy and procedures; on-site review of locking mechanisms and procedures to assure security; and on-site observation of the handling of client records.

75:15-4-8. Client record, handling, retention, and disposal

(a) A program shall have written policy and procedures addressing the storage, retention period, and method of disposal of client records. This policy and procedures shall be compatible with protecting clients' rights against unauthorized confidential information disclosures.

(b) Client records shall be easily retrieved by staff as needed for providing and documenting services.

(c) Compliance with 75:15-4-8 shall be determined by a review of the program's policy and procedures, and a review of office and files.

75:15-4-9. Physical plant, primary role

(a) The primary role of programs is to ensure safety; and to protect the confidentiality and privacy of victims of domestic violence or sexual assault, and their dependent family members. The physical plants of programs shall not be utilized in

any manner which fails to guarantee the confidentiality, safety, and protection of the victims, their dependents and staff.
(b) Facilities that serve both victims and batterers in the same facility shall have written procedures to ensure that its services do not jeopardize the safety and psychological well being of victims.
(c) Compliance with 75:15-4-9 shall be determined by a review of program policies and procedures and a tour of the facility.

75:15-4-10. Fire and safety codes and inspections
(a) The physical environments of all office space shall meet safety, zoning, and building code regulations required by local, state, and federal authorities; and shall obtain and maintain an annual fire and safety inspection from local or state authorities.
(b) Compliance with 75:15-4-10 shall be determined by a review of the annual fire and safety inspection report.

75:15-4-11. Fire fighting and first aid equipment
(a) All facilities shall have a first aid supply kit and annually maintained fire extinguishers.
(b) Compliance with 75:15-4-11 shall be determined by on-site observation and by interviewing staff.

75:15-4-12. Disaster procedures
(a) There shall be written procedures describing the emergency plans in case of a disaster, whether internal or external, or in case of threat to the safety of any client or staff person. Evacuation routes, inside sheltering sites, and fire extinguisher locations shall be posted.
(b) Fire, tornado, bomb threat and intruder drills shall be conducted annually. The date, time, and type of the drill shall be documented.
(c) Compliance with 75:15-4-12 shall be determined by on-site observation, a review of written procedures, staff interviews, and documentation of drills.

75:15-4-13. Persons with special needs
(a) The program building shall allow access for all clients and staff. Referrals must be provided when necessary, and the program shall have written procedures referrals for disabled persons who can not be served on-site. (Americans with Disabilities Act of 1990) Resource: Americans with Disabilities Handbook, published by (U.S.) Equal Employment Opportunities Commission, and the (U.S.) Department of Justice.
(b) Compliance with 75:15-4-13 shall be determined by a review of program policy and procedures.

75:15-4-14. Program environment
(a) The certified program environment shall meet the following conditions:
(1) The facility shall be accessible by an all-weather road.
(2) The facility shall have adequate space in which to carry out the program's goals and objectives, including outdoor areas and equipment when appropriate.
(3) The facility shall have heating and air conditioning equipment adequate to maintain the temperature in areas utilized by clients at between 65oF and 85oF.
(4) The facility shall have adequate ventilation and air circulation provided in the facility to assure an environment that will be comfortable for the clients.
(5) The facility shall have water from an approved tested potable source.
(6) The facility shall have, at minimum, a commode and, lavatory facility. The privacy of individuals shall be assured while using these facilities.
(7) Smoking shall not be allowed in any indoor portion of any program.
(8) Telephones shall be provided for the convenience of the staff, and the necessary accommodation of the clients. Pay telephones only are not acceptable.
(9) Toxic materials and dangerous substances, such as toxic cleaners, insecticides, and matches shall be stored in a non-client area, locked space where they are not accessible to children.
(10) Combustible materials shall be stored in locked non-flammable containers.
(11) The Poison Control Center's toll-free telephone number shall be posted and visible to staff and clients at all times.
(12) Facility sanitation shall be maintained to prevent offensive odors and insect infestation.
(13) All facilities shall have emergency back up lighting. There shall be written policy and procedures for back up lighting in the event of a power outage.
(b) Compliance with 75:15-4-14 shall be determined by a review of program policy and procedures; staff interviews, and on-site observation.

75:15-4-15. Admission criteria
(a) The agency shall have specific written criteria identifying persons for whom the services are intended, and persons who are excluded from receiving services.
(b) The program shall have a written policy requiring referral of any individual who does not meet services criteria.
(c) Compliance with 75:15-4-15 shall be determined by a review of written program policy and procedures; and posted policy or procedures.

75:15-4-16. Program management, policy and procedures
(a) The agency shall maintain written policy and procedures which describe the rules clients are expected to follow and describes staff duties.
(b) Rules shall be visibly posted in client areas.
(c) Clients shall be given a copy of program rules and the provision of such shall be documented in the client record.
(d) The program shall have a written policy of the intent to comply with the Americans with Disabilities Act of 1990.

(e) Compliance with 75:15-4-16 shall be determined by a review of the program's written policy and procedures; rules, and may include client interviews or observation of direct client services.

75:15-4-17. Program mission and goals

(a) The program shall have a written mission statement, and annually state in writing the program's goals.

(b) The annual program goals shall be approved by the agency's governing body each year, and shall be disseminated to personnel and volunteers.

(c) Compliance with 75:15-4-17 shall be determined by a review of the mission statement, program's annual goals, governing body minutes, staff meeting minutes, or any other relevant documentation provided by the program.

75:15-4-18. Annual program evaluation

(a) The agency shall conduct an annual evaluation of the program's services, facilities and policy and procedures. This evaluation shall be carried out according to a written plan, approved by the governing body, formalized in writing and state the plan of evaluation, data to be reviewed, and the persons to conduct the evaluation, e.g., governing body members, staff, or other persons.

(b) Upon completion, this evaluation shall be submitted and reviewed by the governing body, and made available to the OAG, personnel and volunteers.

(c) Compliance with 75:15-4-18 shall be determined by a review of the minutes of the governing body, the program evaluation, staff meeting minutes, or any other relevant documentation provided by the program.

75:15-4-19. Critical incidents

(a) The program shall have policy and procedures requiring documentation and reporting of critical incidents.

(b) Each critical incident shall be recorded and monitored as follows:

(1) agency name and name and signature of the person(s) reporting the critical incident;

(2) name(s) of the client(s) or staff member(s), or property, involved in the critical incident;

(3) the date, time and physical location of the critical incident, if known, and the name of the staff person the incident was reported to;

(4) a description of the incident;

(5) 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;

(6) resolution or action taken, date action taken and signature of the agency director or authorized designee;

(c) Critical incidents that shall be reported to the Office of the Attorney General are reported 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 the Office of the Attorney General Victims Services Unit within forty-eight (48) hours of the incident being documented.

(2) Critical incidents involving disaster at a facility, death or client abuse shall be reported to the Safeline at 1-800-522-7233 immediately via telephone. The notification shall be followed with a written report from the reporting agency within twenty-four (24) hours of the incident and delivered via fax or mail to the Office of the Attorney General Victims Services Unit.

(d) Compliance with 75:15-4-19 shall be determined by a review of policy and procedures, critical incident reports at the program and those submitted to the Office of the Attorney General Victims Services Unit.

SUBCHAPTER 5. CLIENT RECORDS AND CONFIDENTIALITY

75:15-5-1. Purpose

The purpose of this subchapter is to set forth the standards and criteria governing client records and confidentiality of client information, including client records, for domestic violence, batterer's intervention and sexual assault programs.

75:15-5-2. Client records

(a) A certified program shall have and maintain a master client index system containing the client's name, and the program's discreet numerical or letter identifier. If the program is under contract with ~~ODMHSAS~~ the Office of the Attorney General, the discreet identifier shall be the ~~ODMHSAS ICIS~~ OVIS client identification.

(b) A certified program shall have written policy and procedures for correcting errors on record material by lining through, initialing both error and correction, and inserting the correct material either above the error or at the end of the entry. Further, the policy and procedures shall forbid the use of "white-out" or any action which obliterates the error.

(c) Compliance with ~~450~~75:~~19~~15-5-2 shall be determined by on-site observation, client records and any other supporting program documentation.

75:15-5-3. Record content - general

(a) Client records shall contain, at a minimum, the following information:

(1) Intake ~~assessment~~ and screening information:

(A) Client's name;

(B) Date of initial contact/~~admission~~ intake;

(C) Pertinent medical information, including substance abuse;

(D) Emergency contact information;

(E) History/nature of abuse; and

(F) Batterer information if known~~; and~~

~~(G) Drug and alcohol screening, which shall include, but not limited to a substance abuse history~~.

(2) Service notes, which shall minimally include:

(A) The time, date, location and description of services provided;

(B) The signature of staff providing the services; and

(C) A ~~daily service note for shelter clients and a~~ service note for each contact for other services.

(3) Service plan focusing on victim safety and ~~recovery~~, well-being which shall minimally include:

(A) Goals and objectives of the client, which shall be developed and agreed upon between the client and staff; and

(B) Service plans and their updates shall be signed and dated by the client and staff.

(4) ~~Discharge~~ Exit information, which shall minimally include:

(A) Documentation that the client participated in planning for his or her ~~discharge~~ exit from the program;

(B) The reasons for the client's ~~discharge~~ exit or departure; and

(C) Client and staff dated signatures or an explanation if staff were unable to obtain the client's signature.

(b) Each client record entry shall be legible, dated, and signed by the staff member making the entry.

(c) Compliance with ~~450~~75:~~19~~15-5-3 shall be determined by a review of program policy and procedures; ~~observation of the office space or file locations;~~ review of the client records for content; and other supporting program documentation.

75:15-5-3.1. Record content - service specific

(a) Client records for specific services shall conform to the following:

(1) Shelter Services:

(A) On a client's entry to the shelter, staff shall record the client's name, emergency contact person(s) and any referral for medical or emergency services. This information may be a part of the full intake interview if ~~such~~ the full intake is done on entering the shelter.

(B) Shelter clients ~~residents~~ shall have the full intake interview and screening completed within twenty-four (24) hours of ~~admission~~ entry into the shelter.

(C) Service plans shall be completed within five (5) ~~working~~ business days of the shelter client's ~~resident's~~ entry to the shelter.

(D) The service plan shall be reviewed and updated at least every two (2) weeks.

(E) The client's service plan shall include components which address the needs of children accompanying the client.

(F) The service plan shall include safety issues for client and children.

(G) A daily service note.

(2) Crisis Intervention Services:

(A) All contacts with ~~admitted~~ active clients are documented and contacts with persons not receiving additional services shall be documented as prescribed in program policy.

(B) Contact information is kept by the crisis intervention program.

(C) Clients to be transported to shelter facilities shall be screened before the shelter referral is made. If the client is in immediate danger, or no safe housing is available, this screening may be initially waived. If the screening is waived, documentation shall reflect the reason(s) and the notification of such to the shelter.

(3) Counseling, Support and Advocacy Services:

(A) An assessment of the client's needs shall be completed by the third (3rd)counseling or advocacy session.

(B) A service plan shall be completed by the fifth (5th) advocacy~~, rehabilitation~~ or counseling session.

(C) A service plan review and update shall be completed at least every six (6) months.

(4) Children's Services:

(A) Children under the age of six (6) years shall receive an intake with the resident custodial parent or legal guardian within five (5) ~~working~~ business days of the parent's admission to services. However, the screening may be conducted without the presence of the parent, but shall be so documented.

(B) Intake for children six (6) years and older shall be completed within five (5) ~~working~~ business days of the admission of the parent. It may be conducted without the presence of the parent, but shall be so documented.

(C) Documentation of the services provided to a child shall be maintained in the resident custodial parent's record, or in a separate child's record, according to the program's policy and procedures.

(5) Sexual Assault Services:

(A) For victims who continue in support or counseling sessions, a service plan shall be developed by the fifth (5th) visit.

(B) Service plans shall be reviewed and updated at least every ninety (90) days.

(6) Public Education Services:

(A) A standardized program form shall be used to minimally document date, location, organization, attendance, subject, length of presentation and name of presenter.

(B) Public education services records are maintained in a clearly identifiable file.

(7) Transitional Living Services:

(A) A service plan shall be developed within five (5) days of the client moving in.

(B) The service plan shall be reviewed and updated at least every ninety (90) days.

(8) Safe home Services

(A) A service plan that includes goals agreed upon by the client and sponsoring family shall be developed within five (5) business days of the client moving in. On a client's entry to the safe home, the safe home provider shall record the client's name, emergency contact information, and pertinent medical information.

(B) ~~The service plan shall be reviewed and updated at least monthly.~~ Safe Home clients shall receive a full intake interview and screening by program staff within twenty-four (24) hours of admission or by the first business day following admission.

(C) ~~Goals that were set in the service planning process shall be provided to the sponsoring family.~~ A service plan shall be developed within five (5) business days of the client's entry to the safe home.

(D) All records regarding the client shall be retained in the client's record at the sponsoring program.

~~(9) Batterer's Intervention Services:~~

~~(A) An assessment of the client's needs shall be completed prior to initiating the intervention processes and shall include, but not be limited to:~~

~~(i) Current and past history of violence;~~

~~(ii) Current lethality risk; and~~

~~(iii) Drug and alcohol use/abuse screening which shall include, but not be limited to a substance abuse history.~~

~~(B) An individualized written client contract shall be completed by the second (2nd) session; signed by the batterer; and shall include, but not be limited to:~~

~~(i) Attendance policy, including the length of intervention, minimum number of sessions required and the maximum length of time for completion of the required sessions.~~

~~(ii) The criteria for suspension and termination.~~

~~(iii) The program's rules.~~

~~(iv) A written notice in bold type which specifies "Please be advised any reasonable knowledge or suspicion of illegal activities or bodily harm, or a threat of such, to the victim, her or his property, or to third persons, or any attempt, threat or gesture to commit suicide, or any belief that child abuse or neglect is present or has occurred, will be reported to the appropriate~~ person(s) or authorities."

~~(v) A list of provider program expectations, such as participation, homework and that the batterer will be held accountable for all abusive and violent behavior.~~

~~(vi) The batterer's responsibilities for safety planning, including, but not limited to, an awareness of abusive and violent behavior and patterns, e.g., time out procedures, procedures which inform the partner or victim appropriately and are not used to control her or him, logging or writing a journal of efforts to control behavior and non-violence maintenance such as buddy telephone calls, additional support groups, relaxation and exercise, etc.~~

~~(vii) Providing releases of information for collateral treatment, i.e., substance abuse or mental health treatment.~~

~~(C) A service plan shall be completed by the client and counselor by the third (3rd)session.~~

~~(D) A service plan review and update shall be completed every sixty (60) days.~~

~~(E) Service notes shall document the ongoing provision of educational components addressing the risk of battering and other violence.~~

~~(F) Discharge reports shall be completed for all types of discharges. Types and reasons for discharge include:~~

~~(i) Rejection. Reasons for rejection shall be documented and include, but are not limited to: psychiatric history, including active or recent mental health related problems; criminal record of violent crimes; chemical dependency requiring completion of an inpatient or residential treatment program; or inability to function in a group due to limited mental cognitive abilities;~~

~~(ii) Involuntary termination. Reasons for involuntary termination shall be documented and include, but are not limited to: recurrence of violence; arrest; absences from program sessions and activities; failure to actively participate in sessions attended; attending a session when under the influence of alcohol or drugs; violation of any rules of the treating program or violation of the client contract; and~~

~~(iii) Completion.~~

~~(G) Without jeopardizing the safety of the victim and with the written consent of the batterer, unless otherwise ordered by the court, a written report to the referring agent, the victim and the victim's advocate shall be submitted within seven (7) working days of the batterer's discharge and shall include, but not be limited to:~~

~~(i) Summarize the services provided and the batterer's participation;~~

~~(ii) The reason(s) for discharge or rejection;~~

~~(iii) Recommendations;~~

~~(iv) Involuntary termination reports shall include recommendations, which may include, but are not limited to, weekend incarceration, community service hours, probation violation determination, or return to the intervention program; and~~

~~(v) Efforts to notify the referring agent, the victim or the victim's advocate.~~

~~(H) Efforts to notify the referring agent, the victim or the victim's advocate shall be documented in the batterer's record; and~~

~~(I) Copies of all service documentation and reports shall be kept in the batterer's file.~~

(b) Where required information is not obtained, efforts to comply with the requirements of this subsection shall be documented in the client record.

(c) Compliance with this ~~450~~75:~~19~~15-5-3.1 shall be determined by a review of client records and policy and procedures.

75:15-5-4. Client confidentiality

(a) Case or client records, files or notes, of a DV/SA program shall be confidential and shall only be released under certain prescribed conditions (~~43A O.S. § 3-313 and 22 O.S.§ 1601~~ 74 O.S. § 18p-3).

(b) The program shall have written policy and procedures to ~~insure~~ ensure confidentiality of client information and identity and shelter location and govern the disclosure of information including verbal disclosure contained in client records ~~which also complies with 450:19-5-10~~.

(c) Compliance with ~~450~~75:~~19~~15-5-4 shall be determined by a review of the program's policy and procedures ~~manual; on-site review of locking mechanisms to assure security~~; and on-site observation of the handling of client records.

75:15-5-5. Physical safety and integrity of client records

(a) Client records shall be maintained in a locked and secure manner. The program shall have written policies and procedures to safeguard the record and information contained in the record against loss, theft, defacement, tampering, or unauthorized access or use.

(b) Compliance with ~~450~~75:~~19~~15-5-5 shall be determined by a review of the program policy and procedures; on-site review of locking mechanisms and procedures to assure security; and onsite observation of the handling of client records.

75:15-5-6. Client record, handling, retention, and disposal

(a) A program shall have written policy and procedures addressing the storage, retention period, and method of disposal of client records. This policy and procedures shall be compatible with protecting clients' rights against unauthorized confidential information disclosures.

(b) Client records shall be easily retrieved by staff as needed for providing and documenting services.

(c) Compliance with ~~450~~75:~~19~~15-5-6 shall be determined by a review of the program's policy and procedures ~~manual~~, and a review of office and files.

75:15-5-10. Confidentiality of mental health and drug or alcohol abuse treatment information [REVOKED]

~~(a) All mental health and drug or alcohol abuse treatment information, whether recorded or not, and all communications between a physician or psychotherapist and a consumer are both privileged and confidential. In addition, the identity of all consumers who have received or are receiving mental health or drug or alcohol abuse treatment services is both confidential and privileged. Such information shall only be available to persons or agencies actively engaged in the treatment of the consumer unless a state or federal law exception applies.~~

~~(b) All facilities shall have policy and procedures protecting the confidential and privileged nature of mental health and drug or alcohol abuse treatment information in compliance with state and federal law and which contain at a minimum:~~

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

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

~~(3) a procedure to limit access to mental health and drug or alcohol abuse treatment information to only those persons or agencies actively engaged in the treatment of the patient and to the minimum amount of information necessary to carry out the purpose for the release;~~

~~(4) a procedure by which a consumer, or the consumer's legally authorized representative, may access the consumer's mental health and drug or alcohol abuse treatment information;~~

~~(5) an acknowledgement that certain state and federal law exceptions to disclosure of mental health and drug or alcohol abuse treatment information without the written consent of the consumer or the consumer's legally authorized representative exist and the facility will release information as required by those laws and~~

~~(6) a procedure by which to notify a consumer of his or her right to confidentiality.~~

~~(c) A facility disclosing information pursuant to a written consent to release information shall ensure the written consent form complies with all applicable state and federal law and contains at a minimum the following:~~

~~(1) the name of the person or program permitted to make the disclosure;~~

~~(2) the name or title of the person or the name of the organization to which disclosure is to be made;~~

~~(3) the name of the consumer whose records are to be released;~~

~~(4) a description of the information to be disclosed;~~

~~(5) the specific reason for the disclosure;~~

~~(6) the signature of the consumer or the consumer's legally authorized representative;~~

~~(7) the date the consent to release was signed by the consumer or the consumer's legally authorized representative;~~

~~(8) an expiration date, event or condition which shall ensure the release will last no longer than reasonably necessary to serve the purpose for which it is given;~~

~~(9) a statement of the right of the consumer, or the consumer's legally authorized representative, to revoke the consent to release in writing and a description of how the patient may do so;~~

~~(10) a confidentiality notice which complies with state and federal law; and~~

~~(11) a statement in bold face writing that "The information authorized for release may include records which may indicate the presence of a communicable or venereal disease which may include, but is not limited to, diseases such as hepatitis, syphilis, gonorrhea, and the human immunodeficiency virus, also known as Acquired Immune Deficiency Syndrome (AIDS)."~~

~~(d) Compliance with 450:19-5-10 shall be determined by a review of facility policy and procedures; facility forms; consumer record reviews; interviews with staff and consumers; and any other supporting facility documentation.~~

SUBCHAPTER 7. ~~DV/SA SHELTER PROGRAM~~ PHYSICAL ENVIRONMENTS

75:15-7-1. Physical plant, primary role

(a) The primary role of ~~DV/SA~~ programs is to provide safety; and to protect the confidentiality and privacy of victims of domestic violence or sexual assault, and their dependent family members. The physical plants of ~~DV/SA~~ programs shall not be utilized in any manner which fails to guarantee the confidentiality, safety, and protection of the ~~clients~~ victims, their dependents and staff.

(b) Facilities that serve both victims and batterers in the same facility shall have written procedures to ensure that its services do not jeopardize the safety and psychological well being of victims.

(c) Programs shall obtain written permission from the ~~ODMHSAS Domestic Violence/Sexual Assault Division~~ Office of the Attorney General Victims Services Unit before using any shelter or housing option, for purposes other than housing for victims of ~~dv/sa~~ DV/SA.

(d) Compliance with ~~450~~75:~~19~~15-7-1 shall be determined by a review of program policies and procedures~~, shelter rules, client records,~~ and a tour of the facility.

75:15-7-2. Fire and safety codes and inspections

(a) The physical environments of shelter facilities, housing options and all office space shall meet safety, zoning, and building code regulations required by local, state, and federal authorities; and shall obtain and maintain an annual fire and safety inspection from local or state authorities.

(b) Compliance with ~~450~~75:~~19~~15-7-2 shall be determined by a review of the annual fire and safety inspection report.

75:15-7-3. Fire fighting and first aid equipment

(a) All facilities shall have a first aid supply kit and annually maintained fire extinguishers.

(b) Compliance with ~~450~~75:~~19~~15-7-3 shall be determined by on-site observation and by interviewing staff.

75:15-7-4. Disaster procedures

(a) There shall be written procedures describing the emergency plans in case of ~~an external~~ a disaster, ~~e.g., tornado or flood;~~ whether internal or external, or in case of threat to the safety of any ~~resident~~ client or staff person. Evacuation routes, inside sheltering sites, and fire extinguisher locations ~~These procedures~~ shall be posted.

(b) Fire, tornado, bomb threat and intruder drills shall be conducted annually. The date, time, and type of the drill shall be documented.

(c) Compliance with ~~450~~75:~~19~~15-7-4 shall be determined by on-site observation, a review of ~~the premises and of~~ written procedures, ~~and by interviewing~~ staff interviews, and documentation of drills ~~of shelter~~.

75:15-7-5. Persons with special needs

(a) The program building shall allow access for all clients and staff. Referrals must be provided when necessary, and the program shall have written procedures for referrals ~~for~~ of disabled persons who can not be served on-site. (Americans with Disabilities Act of 1990) Resource: Americans with Disabilities Handbook, published by (U.S.) Equal Employment Opportunities Commission, and the (U.S.) Department of Justice.

(b) Compliance with ~~450~~75:~~19~~15-7-5 shall be determined by a review of program policy and procedures.

75:15-7-6. Program environment~~, all DV/SA service programs~~

(a) The certified ~~DV/SA~~ program environment shall meet the following conditions:

(1) The facility shall be accessible by an all-weather road.

(2) The facility shall have adequate space in which to carry out the program's goals and objectives, including outdoor areas and equipment when appropriate.

(3) The facility shall have heating and air conditioning equipment adequate to maintain the temperature in areas utilized by ~~residents~~ clients at between 65°F and 85°F.

(4) The facility shall have adequate ventilation and air circulation provided in the facility to assure an environment that will be comfortable for the ~~residents~~ clients.

(5) The facility shall have water from an approved tested potable source.

(6) The facility shall have, at minimum, a commode and, lavatory facility. The privacy of individuals shall be assured while using these facilities.

(7) All doors, including those for each closet, bedroom, bathroom, and office, shall be easily opened from both sides.

(8) Smoking shall not be allowed in any indoor portion of any facility.

(9) Telephones shall be provided for the convenience of the staff, and the necessary accommodation of the clients. Pay telephones only are not acceptable.

~~(10) The facility shall be secured by double locks or locking devices such as chains, bolts, etc. on ground floor~~

~~doors. However, documentation that the locking system meets state and local fire code inspection shall be accepted. When key-locked deadbolts are used, the location of the keys must be identified and readily accessible.~~

(~~11~~10) There shall be written policy and procedures addressing the use of any outdoor recreational space, including required supervision and the safety of pre-schoolers.

~~(12) All outdoor openings such as doors and windows shall be screened and covered for privacy.~~

(~~13~~11) Toxic materials and dangerous substances, such as toxic cleaners, insecticides, and matches shall be stored in a non-~~resident~~ client area, locked space where they are not accessible to children.

(~~14~~ 12) Combustible materials shall be stored in locked non-flammable containers.

(~~15~~13) The Poison Control Center's toll-free telephone number shall be posted and visible to staff and ~~resident~~ clients at all times.

(~~16~~14) Facility sanitation shall be maintained to prevent offensive odors and insect infestation.

~~(17) Provision shall be made for cleaning the facility minimally once per week. A written work schedule or other form of notification shall be posted, which clearly delineates each individual's responsibility for various tasks.~~

(~~18~~ 15) All facilities shall have emergency back up lighting. There shall be written policy and procedures for back up lighting in the event of a power outage.

(b) Compliance with ~~450~~75:~~19~~15-7-6 shall be determined by a review of program policy and procedures; ~~shelter rules; review of fire and safety inspection report;~~ staff ~~and resident client~~ interviews, and ~~shelter policy and procedures~~ on-site observation.

75:15-7-7. Program environment, shelter services programs

(a) All certified shelter services programs shall comply with section ~~450~~75:~~19~~15-7-6 and the following:

(1) Baby beds and high chairs that ensure children's safety and comfort shall be available for infants and small children.

(2) The facility shall have access to outdoor recreational space and playground equipment located, installed, and maintained as to ensure the safety of the clients and their children. The grounds and access thereto shall be maintained in a manner that shall ensure the area is free of any hazard to health or safety.

(3) Safe and adequate internal play space for children, including outlet protectors and gated stairwells.

(~~3~~4) Kitchens used for meal preparation in the residential facility shall be provided with the necessary equipment for the preparation, storage, serving, and clean-up of all meals. All equipment shall be maintained in working order.

(~~4~~5) Provisions shall be made to assist or make food available for meal preparation that accommodates special diets.

(~~5~~6) The facility shall have, at minimum, a commode, lavatory, and bathing facility at a ratio of one (1) to twelve (12) residents, including infants and children. The privacy of individuals or families shall be assured while using these facilities.

(~~6~~7) Residents' rooms shall be so arranged that the client has direct access to a hallway or common area without having to pass through other resident's rooms or areas.

(~~7~~8) There shall be written policy and procedures for laundry and linens, addressing frequency of changing linens, and laundry arrangements within the facility.

(~~8~~9) Laundry equipment shall be provided within the residential facility, and shall be kept clean, well-maintained, and properly ventilated.

(~~9~~10) Reasonable ~~Space~~ space shall be provided for storage of clients' personal belongings.

(~~10~~11) Written policy and procedures shall address secure storage of client valuables.

(12) Written policy and procedures shall address the secure handling and storage of client medications, including policy to document client access to medication.

(13) The facility shall be secured by double locks or locking devices such as chains, bolts, etc. on ground floor doors. However, documentation that the locking system meets state and local fire code inspection shall be accepted. When key-locked deadbolts are used, the location of the keys must be identified and readily accessible.

(14) All outdoor openings such as windows shall be covered for privacy.

(15) Provision shall be made for cleaning the facility minimally once per week. A written work schedule or other form of notification shall be posted, which clearly delineates each individual's responsibility for various tasks.

(b) Compliance with 75:15-7-7 shall be determined by a review of program policy and procedures; shelter rules, staff and client interviews where appropriate, and on-site observation.

75:15-7-8. Program environment, safe home services program

(a) All safe home services programs shall comply with section 75:15-7-6 and the following:

(1) The facility shall have, at minimum, a commode, lavatory, and bathing facility at a ratio of one (1) for every twelve (12) persons, including infants and children. The privacy of individuals or families shall be assured while using these facilities.

(2) Written policy and procedures shall address the secure handling and storage of client medications, including policy to document client access to medication.

(3)The safe home shall be secured by double locks or locking devices such as chains, bolts, etc. on ground floor doors which meets state and local fire code inspection. When key-locked deadbolts are used, the location of the keys must be identified and readily accessible.

(4) All outdoor openings such as windows shall be covered for privacy.

(b) Compliance with 75:15-7-8 shall be determined by a review of program policy and procedures, provider and client interviews where appropriate, and on-site observation.

SUBCHAPTER 9. PROGRAM MANAGEMENT AND PERFORMANCE IMPROVEMENT

75:15-9-1. Admission criteria

(a) The agency shall have specific written criteria for each program service component identifying persons for whom the services are intended, and persons who are excluded ~~for admission for~~ from receiving services.

(b) The program shall have a written policy requiring referral of any individual who does not meet services criteria.

(c) Compliance with ~~450~~75:~~19~~15-9-1 shall be determined by a review of written program policy and procedures ~~manual~~; and posted policy or procedures.

75:15-9-2. Program management, policy and procedures

(a) The agency shall maintain written policy and procedures which describe each program service component, the rules client's are expected to follow for each component, and staff ~~functions~~ duties. Policies shall include but are not limited to:

(1) Physical punishment of children shall not be allowed.

(2) Length of stay limitations, if any.

(3) ~~If a shelter requires client participation~~ Participation in housekeeping, food preparation or other activities, if applicable.

(~~4~~b) Rules shall be visibly posted in client areas.

(~~5~~c) Clients shall be given a copy of program rules and the provision of such shall be documented in the client record.

(~~6~~d) The program shall have a written policy of the intent to comply with the Americans with Disabilities Act of 1990.

(~~b~~e) Compliance with ~~450~~75:~~19~~15-9-2 shall be determined by a review of the program's written policy and procedures ~~manual~~; rules; client interviews and record documentation and on-site observation.

75:15-9-7. Program mission and goals

(a) The program shall have a written mission statement, and annually state in writing the program's goals.

(b) The ~~mission statement and~~ annual program goals shall be approved by the agency's governing body each year, and shall be disseminated to ~~employees~~ personnel and volunteers.

(c) Compliance with ~~450~~75:~~19~~15-9-7 shall be determined by a review of the mission statement, program's annual goals, governing body minutes, staff meeting minutes and any other relevant documentation provided by the program.

75:15-9-8. Annual program evaluation

(a) The agency shall conduct an annual evaluation of the program's services, facilities and policy and procedures. This evaluation shall be carried out according to a written plan, approved by the governing body, formalized in writing and state the plan of evaluation, data to be reviewed, and the persons to conduct the evaluation, e.g., governing body members, staff, or other persons.

(b) Upon completion, this evaluation shall be submitted and reviewed by the governing body, and made available to ~~employees~~ personnel and volunteers.

(c) Compliance with ~~450~~75:~~19~~15-9-8 shall be determined by a review of the minutes of the governing body, the program evaluation, and staff meeting minutes or any other relevant documentation.

75:15-9-9. Critical incidents

(a) The program shall have policy and procedures requiring documentation and reporting of critical incidents.

(b) Each critical incident shall be recorded and monitored as follows:

(1) agency name and name and signature of the person(s) reporting the critical incident;

(2) name(s) of the client(s) or staff member(s), or property, involved in the critical incident;

(3) the date, time and physical location of the critical incident, if known, and the name of the staff person the incident was reported to;

(4) a description of the incident;

(5) 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;

(6) resolution or action taken, date action taken and signature of the agency director or authorized designee;

(c) Critical incidents that shall be reported to ~~ODMHSAS~~ the Office of the Attorney General are reported 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~~ the Office of the Attorney General Victims Services Unit within ~~twenty-four (24)~~ forty-eight (48) hours, or if the incident occurs on a weekend or holiday, the next business day of the incident being documented.

(2) Critical incidents involving ~~allegations constituting a sentinel event~~ disaster at a facility, death or client abuse shall be reported to ~~ODMHSAS~~ the Safeline at 1-800-522-7233 immediately via telephone ~~or fax, but not less than twenty-four (24) hours of the incident~~. ~~If reported by telephone, the~~ The ~~report~~ notification shall be followed with a written report from the reporting agency within twenty-four (24) hours of the incident and delivered via fax or mail to the Office of the Attorney General Victims Services Unit.

(d) Compliance with ~~450~~75:~~19~~15-9-9 shall be determined by a review of policy and procedures, critical incident reports at the program and those submitted to ~~ODMHSAS~~ the Office of the Attorney General Victims Services Unit ~~and performance improvement files~~.

75:15-9-10. Performance improvement plan [REVOKED]

~~(a) The program shall have a written performance improvement plan. This plan shall include, but not be limited to, the following:~~

~~(1) The purposes of the performance improvement plan, which shall include, but not be limited to, the improvement of services to clients.~~

~~(2) The job titles of persons responsible for the implementation and operations of the plan.~~

~~(3) The operational procedures of the plan.~~

~~(4) Protection of client confidentiality with no client name(s) or initial(s) being stated in any report or recommendation.~~

~~(5) Monitoring of services to clients to insure:~~

~~(A) Services offered are based on client need(s).~~

~~(B) Service delivery is based on client need(s).~~

~~(C) There is routine and regular use of case conferences, case consultation and staff supervision of client cases.~~

~~(D) Cultural competence and cultural sensitivity.~~

~~(6) Provisions for an annual report of the plan's operation, recommendations and disposition of those recommendations to be reported, annually, to the governing body.~~

~~(7) Annual review, recommendations, and approval of the plan by the governing body.~~

~~(8) A mechanism by which clients may voluntarily provide input regarding services.~~

~~(b) Compliance with 450:19-9-10 shall be determined by a review of the performance improvement plan, documentation of the plan's operations, recommendations, disposition of those recommendations, governing board and staff meeting minutes, and any other supporting documentation provided by the program.~~

SUBCHAPTER 11. CLIENT RIGHTS [REVOKED]

75:15-11-1. Client rights, shelter and residential services [REVOKED]

~~(a) All DV/SA shelters and transitional living services shall comply with the applicable rules in Title 450, Chapter 15. Consumer Rights.~~

75:15-11-2. Client rights, non-shelter residential services [REVOKED]

~~(a) All DV/SA programs providing batterer's intervention, sexual assault or other outpatient services shall comply with the applicable rules in Title 450, Chapter 15. Consumer Rights.~~

75:15-11-3. Client's grievance policy [REVOKED]

~~(a) Each DV/SA program shall comply with the applicable rules in Title 450, Chapter 15 Consumer Rights.~~

SUBCHAPTER 13. PERSONNEL AND VOLUNTEERS

PART 1. GENERAL

75:15-13-1. Personnel policies and procedures

(a) The program shall have written policies and procedures governing the conditions of agency employment and volunteer utilization. Documentation of the governing authority's review and approval of all agency policy and procedures shall be present ~~as determined by.~~:

(b) Compliance with ~~450~~75:~~19~~15-13-1 shall be determined by:

(1) Review of the program's personnel policies and procedures.

(2) Review of the minutes of the governing authority to confirm approval of the policies and procedures.

75:15-13-2. Policy and procedures, ~~staff~~ personnel and volunteer knowledge and access

(a) The agency's policy and procedures shall be accessible to all ~~employees~~ personnel and volunteers and each shall be informed of personnel policies and procedures, and any other materials regulating or governing the conditions of their employment or continued utilization as volunteers. Further, these written ~~policy~~ policies and procedures shall ~~insure~~ ensure ~~staff~~ personnel and volunteers are informed of any changes to these aforestated materials.

(b) Compliance with ~~450~~75:~~19~~15-13-2 shall be determined by:

(1) review of the program's written policies and procedures;

(2) staff meeting minutes; and

(3) interviews with staff, volunteers and review of personnel files.

75:15-13-3. Non-discrimination

(a) The ~~program's~~ agency's ~~written~~ policies and ~~procedure~~ procedures shall include provisions for non-discrimination with regard to the agency's relationship with ~~staff~~ personnel, volunteers and clients ~~as required by~~ in accordance with applicable state and federal laws ~~and/or administrative rules~~.

(b) Compliance with ~~450~~75:~~19~~15-13-3 shall be determined by a review of the program's written policy and procedure, staff interviews and client interviews where appropriate.

~~(c) This standard (450:19-13-3) shall be scored for compliance as follows:~~

~~(1) Score 0 - The program's written policies and procedures make no provisions for non-discrimination with regard to employees.~~

~~(2) Score 3 - The program's written policies and procedures include provision for non-discrimination with regard to employees.~~

75:15-13-4. Selection of personnel and volunteers

(a) The methods for selecting ~~staff~~ personnel and volunteers shall be described in policy and procedures and shall include, but not be limited to:

(1) The processes for recruitment, selection and appointment~~.~~; and

(2) ~~The final selection of an applicant shall be based upon written~~ Written criteria ~~which are~~ demonstrably related to the position being filled.

~~(3) Composition of individuals responsible for interviewing, recommending or selecting an applicant.~~

(b) Compliance with ~~450~~75:~~19~~15-13-4 shall be determined by:

(1) A review of the policies and procedures.

(2) A review of job descriptions for ~~employees~~ personnel and volunteers.

(3) A review of any other supporting documentation.

75:15-13-5. Job descriptions, ~~employees~~ personnel and volunteers

(a) The agency shall have written job descriptions for ~~employees~~ personnel and volunteers defining the duties of, and minimum qualifications for, each position.

(b) Compliance with ~~450~~75:~~19~~15-13-5 shall be determined by:

(1) a review of the program's policies and procedures, and

(2) a review of the program's job descriptions.

75:15-13-8. Volunteer and personnel records

(a) The agency shall maintain record(s) for each staff member and volunteer selected and utilized; documentation shall minimally include:

(1) job description;

(2) employment or volunteer application or resume;

(3) documentation of current qualifications and training as required and defined in the job description;

(4) duty or work assignment;

(5) record of hours worked or hours of service performed;

(6) record of participation in training;

(7) staff performance evaluation(s); and

(8) emergency notification information.

(b) Compliance with ~~450~~75:~~19~~15-13-8 shall be determined by a review of ~~volunteer~~ personnel records.

75:15-13-9. Supervision of ~~employees~~personnel and volunteers

(a) A certified program shall establish in writing lines of supervision for all ~~employees~~ personnel and volunteers ~~and have a defined schedule of supervisory meetings~~.

(b) A certified program shall ensure each volunteer has the knowledge appropriate to his or her job duties and are supervised by staff.

(c) Compliance with ~~450~~75:~~19~~15-13-9 shall be determined through a review of the program's policy and procedures, and any other supporting documentation provided, including but not limited to, ~~employee~~ personnel/volunteer manuals, organizational charts, job descriptions, and personnel files.

75:15-13-10. Performance evaluation of ~~employees~~personnel and volunteers

(a) The agency shall have policies and procedures mandating the evaluation of ~~employee~~ personnel and volunteer employment and service performance. These policies and procedures shall minimally include:

(1) performance evaluations shall be completed at least annually, to include an evaluation of the executive director;

(2) define the reason(s) for any evaluation other than annual;

(3) performance evaluations shall be in ~~a standardized, printed format~~ writing and based on the staff's job description;

(4) each evaluation shall be individually discussed with the ~~employee~~ staff or volunteer;

(5) ~~employees~~ personnel and volunteers shall have a documented opportunity to respond, in writing, to each of their individual performance evaluations;

(6) both ~~employee~~ staff or volunteer and supervisor shall sign and date the performance evaluation. However, the evaluation document shall state the ~~employee~~ staff's or volunteer's signature does not necessarily constitute agreement with the evaluation content.

(b) Compliance with ~~450~~75:~~19~~15-13-10 shall be determined by a review of:

(1) program policies and procedures, governing authority meeting minutes where applicable, and

(2) review of ~~employee~~ staff and volunteer files.

PART 3. TRAINING

75:15-13-20. ~~Employee~~ Personnel, paraprofessional and volunteer development plan [REVOKED]

~~(a) The agency shall have a written employee, paraprofessional and volunteer development plan outlining opportunities for staff growth and development, within the availability of agency resources. This plan shall address, but not be limited to:~~

~~(1) inservice training and education programs;~~

~~(2) availability of professional reference materials; and~~

~~(3) orientation program content and procedures.~~

~~(b) Compliance with 450:19-13-20 shall be determined by a review of the written program for inservice training and opportunities for staff growth and development.~~

75:15-13-20.1. Orientation - general, employees personnel and volunteers

(a) A certified program shall ~~have a formal~~ provide a minimum of 10 hours orientation ~~program~~ training to familiarize new ~~employees~~ personnel and volunteers providing direct services with the program which includes, but is not limited to:

(1) Program goals and services of each service component;

(2) Program policy and procedures;

(3) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;

(4) Facility safety and disaster plans;

(5) First aid kits and fire extinguishers, their location, contents and use;

(6) Universal precautions;

(7) Client rights;

(8) Domestic violence and its effects on victims and children;

(9) The cycle of domestic violence;

(10) Power and control tactics of abuse;

(11) Crisis intervention techniques;

(12) Sexual assault;

(13) Victim advocacy;

(14) Parenting and disciplinary techniques;

(15) Active listening techniques;

(16) Accessing resources needed by victims and their families;

(17) ~~The orientation training component shall be a minimum of ten (10) hours~~ Safety planning for adults and age appropriate safety planning for children; ~~and~~

(18) ~~Orientation must take place within the first week of employment or prior to direct client contact and services.~~ Basic child development;

(19) Legal and ethical issues; and

(20) Cultural Sensitivity.

(b) Volunteers providing indirect services are required to complete orientation as prescribed by the Executive Director which shall include training on confidentiality and facility safety and disaster plans.

(~~b~~ c) Orientation for personnel must take place within 30 days of employment or prior to unsupervised direct client contact and services. Volunteer orientation must occur within 6 months or prior to unsupervised, direct client contact and services. The Executive Director of a facility may waive orientation training if documented that the staff or volunteer has completed the requisite program training within the past year.

(d) Compliance with ~~450~~75:~~19~~15-13-20.1 shall be determined by a review of the written policies and procedures, and ~~employee~~ personnel and volunteer training manuals and records.

75:15-13-20.2. Inservice and ongoing training for ~~employees~~ personnel and volunteers

(a) A certified program shall have policy and procedures mandating, at the minimum, sixteen (16) hours of annual training of all staff~~,~~ which shall include~~, but not be limited to~~:

(1) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;

(2) Facility safety and disaster plans;

(3) First aid kits and fire extinguishers, their location, contents and use;

(4) Universal precautions, and

(5) Client rights~~;~~.

The remaining hours of annual training shall be related to domestic violence, sexual assault, stalking and administration as prescribed and approved by the Executive Director.

~~(6) Program evaluation and goals;~~

~~(7) Domestic violence and its effects on victims and children;~~

~~(8) The cycle of domestic violence;~~

~~(9) Power and control tactics of abuse;~~

~~(10) Crisis intervention techniques;~~

~~(11) Sexual assault;~~

~~(12) Victim advocacy;~~

~~(13) Parenting techniques;~~

~~(14) Active listening techniques;~~

~~(15) Accessing resources needed by victims and their families;~~

~~(16) First aid and CPR for adult, children, and infants within 30 days of employment (for employees only)~~.

(b) A certified program shall have policy and procedures mandating ~~the~~ a minimum of four hours annual training of all volunteers providing direct services, related to domestic violence, sexual assault, and stalking as prescribed and approved by the Executive Director ~~which shall include, but not be limited to:~~

~~(1) Confidentiality, to include verbal confidentiality whether inside or outside the facility and client records;~~

~~(2) Facility safety and disaster plans;~~

~~(3) First aid kits, their location, contents and use;~~

~~(4) Universal precautions~~

~~(5) Client rights;~~

~~(6) Program evaluation and goals;~~

~~(7) Volunteers who provide less than eight (8) hours of direct service per month shall receive a minimum of four (4) hours annual training;~~

(c ~~8~~) Individuals that volunteer indirect services and do not meet the requirements for a volunteer providing direct services as defined in OAC ~~450~~75:~~19~~15-1-2 shall receive annual training as prescribed by the Executive Director ~~annually review the certified program's policies and procedures addressing items (1) through (5) of this section~~, but do not have a minimum number of training hours required.

(d) Documentation of training must include the topic of the training, the name of the trainer(s), the date of the training, the length of the training session, the sponsor of the training, and approval of the training by the Executive Director of the agency.

(e) A Certified Domestic and Sexual Violence Response Professional in good standing with the Oklahoma Coalition Against Domestic Violence and Sexual Assault (OCADVSA) shall be deemed to be current with annual training requirements.

(~~e~~f) Compliance with ~~450~~75:~~19~~15-13-20.2 shall be determined by a review of policy and procedures; ~~volunteer or staff training materials; staff development and in-service training documentation~~ review of training records and other provided documentation of personnel training; ~~employee and volunteer development plan~~ and a review of personnel or volunteer records.

75:15-13-24. ~~Staff~~ Personnel training, children's services

(a) Prior to providing any direct services, children's services ~~staff~~ personnel shall receive the prescribed orientation training and minimally have one (1) year ~~full-time~~ employment or volunteer experience in a child care or service related field, or an equivalent combination of education, training and experience in child care or development issues.

(b) Compliance with ~~450~~75:~~19~~15-24 shall be determined by:

(1) Review of program's policy and procedures.

(2) Review of program's training records and other provided documentation of staff training.

(3) Review of personnel or volunteer records.

75:15-13-25. ~~Staff~~ Personnel training, sexual assault services

(a) Prior to providing any direct services all sexual assault services staff shall receive classroom training in addition to basic orientation which shall include but not be limited to information regarding sexual assault and rape, date rape, spousal rape, incest, stalking and sexual harassment, as well as training in safety planning and local procedures for providing sexual assault services for victims of rape.

(b) Compliance with 75:15-13-25 shall be determined by:

(1) Review of program's policy and procedures.

(2) Review of program's training records and other provided documentation of staff training.

(3) Review of personnel or volunteer records.

75:15-13-26. ~~Staff~~ Personnel training, transitional living services

(a) Prior to providing any direct services, all transitional living services ~~staff~~ personnel shall receive the prescribed orientation training and minimally have at least six (6) months experience working or volunteer experience in a certified domestic violence/sexual assault program, or related service. When there is staffing shortage situations, a staff person-in-training may be utilized if under the direct supervision of a trained, experienced staff person.

(b) Compliance with ~~450~~75:~~19~~15-13-26 shall be determined by:

(1) Review of program's policy and procedures.

(2) Review of program's training records and other provided documentation of staff training.

(3) Review of personnel records.

75:15-13-27. ~~Staff~~ Provider training, safe home services

(a) Prior to providing any direct services, all safe home ~~host families~~ providers shall minimally receive ~~sixteen~~ ten ~~(16)~~(10) training hours provided by a staff member of a ~~dv/sa~~ DV/SA program certified to provide safe home services, which shall minimally include:

(1) the nature and scope of domestic violence and sexual assault including its effects on victims and children;

(2) societal attitudes toward domestic violence and sexual assault;

(3) orientation in the services, structure, philosophy and history of the sponsoring agency, ~~and~~

(4) safety planning and disaster plans~~.~~;

(5) first aid kit and fire extinguisher use;

(6) confidentiality, to include verbal confidentiality whether inside or outside the home;

(7) client rights; and

(8) universal precautions.

(b) The program shall have policy and procedures mandating a minimum of four (4) hours annual training for safe home providers.

(~~b~~c) Compliance with ~~450~~75:~~19~~15-13-27 shall be determined by:

(1) Review of program's policy and procedures.

(2) Review of program's training records ~~and other provided documentation of staff training~~.

~~(3) Review of personnel records.~~

75:15-13-28. ~~Staff~~ Personnel training, public education services

(a) Prior to providing public education services, staff shall receive the prescribed orientation training and training and education as prescribed and approved by the agency.

(b) Compliance with ~~450~~75:~~19~~15-13-28 shall be determined by:

(1) Review of program's policy and procedures.

(2) Review of program's training records and other provided documentation of staff training.

(3) Review of personnel records.

75:15-13-29. ~~Staff~~ Personnel training, Court Advocates

(a) Prior to providing services, Court Advocates shall receive the prescribed orientation training, and training in the following:

(1) protective orders;

(2) full faith and credit;

(3) the court process; and,

(4) at least three (3) hours of accompanied court time with a trained court advocate.

(b) Compliance with ~~450~~75:~~19~~15-13-29 shall be determined by:

(1) Review of program's policy and procedures.

(2) Review of program's training records and other provided documentation of staff training.

(3) Review of personnel records.

75:15-13-30. ~~Staff~~ Personnel training, batterer's intervention services

(a) ~~Staff~~ Personnel providing batterer's intervention services shall minimally have:

(1) A Bachelor's degree in a behavioral health or criminal justice related field and two years related work experience; or

(2) Four (4) years supervised experience providing counseling and treatment or related services.

(3) At least one staff ~~member~~ in each certified program meeting the requirements defined in ~~450~~75:~~19~~15-1-2 for "professional staff" or the program shall contract with an individual that meets the requirements for "professional staff" for consultation.

(b) Prior to providing any direct services, ~~staff~~ personnel providing batterer's intervention services shall receive the prescribed orientation and at least three (3) hours training in:

(1) the dynamics and scope of domestic violence and sexual assault; and

(2) the dynamics of batterers.

(c) Compliance with ~~450~~75:~~19~~15-13-30 shall be determined by:

(1) Review of program's policy and procedures.

(2) Review of program's training records and other provided
documentation of staff training.

(3) Review of personnel records.

SUBCHAPTER 15. GOVERNING AUTHORITY

75:15-15-1. Governing authority

(a) The agency shall have a governing authority. In the instance of Native American programs, the tribal council may be the governing body.

(b) The governing authority shall establish, and function under, written by-laws. These bylaws shall minimally include the designation of regular quarterly meetings~~; at a pre-established day, time and location~~ to be held in accordance with the Open Meeting Act; and at all meetings of the governing authority, and committees thereof, written minutes shall be recorded and retained.

(c) Compliance with ~~450~~75:~~19~~15-15-1 shall be determined by:

(1) Documents of incorporation or registration as a business entity or documentation from the appropriate Tribal Council.

(2) Review of the written by-laws.

(3) Review of the governing authority's and its committee's minutes.

75:15-15-2. Governing authority, documentation of source of authority [REVOKED]

~~(a) There shall be written documentation of the governing authority's source of authority. This authority comes from the articles of incorporation; or in the instance of a Native American tribal organization, the Tribal Council.~~

~~(b) Compliance with 450:19-15-2 shall be determined by a review of the articles of incorporation or documentation from the appropriate Tribal Council.~~

75:15-15-3. Duties of the governing authority

(a) The duties of the governing authority shall include, but are not limited to:

(1) Approving all policy for the operation of the agency; and insuring procedures for the implementation of policy are in place and enforced.

(2) Ensuring the agency operates in compliance with established agency policy, applicable state and federal law and administrative rules.

(3) Compliance with the by-laws of the governing authority.

(4) Ensuring all financial transactions and events requiring the approval of the governing authority are reviewed and authorized by the governing authority prior to any commitment by agency ~~staff~~ personnel.

(5) The selection, annual evaluation and continuance of retention of the executive director.

(b) Compliance with ~~450~~75:~~19~~15-15-3 shall be determined by a review of:

(1) by-laws and minutes of the meetings of the governing authority and its committees;

~~(2) informational packets distributed at meetings of the governing authority;~~

(~~3~~2) posted, or otherwise distributed, written materials regarding decisions, and other notifications, of the governing authority;

(~~4~~3) ~~staff~~ personnel meeting minutes of the program and its various divisions or geographical locations where applicable; and

(~~5~~4) written evaluation, and any other documentation regarding the retention or selection or hiring, of the executive director.

75:15-15-4. Governing authority, meeting minutes

(a) Minutes of the governing authority~~, and its committees,~~ shall be kept in written form; reviewed at the next following meeting; corrected if such is approved; and signed by the presiding or authorized officer or chairperson.

(b) Meeting minutes shall include, but are not limited to, recording of:

(1) the date, time and place of the meeting;

(2) names of those members attending;

(3) whether, or not, the meeting was convened; and if not why;

(4) approval of minutes from past meeting.

(5) topics and issues discussed and decisions reached;

(6) recording of motions and of votes on the motion; and

(7) time of adjournment.

(c) Compliance with ~~450~~75:~~19~~15-15-4 shall be determined by the review of the meeting minutes of the governing authority.

SUBCHAPTER 17. CLIENT RIGHTS, DOMESTIC VIOLENCE, BATTERER'~~'~~S INTERVENTION, SEXUAL ASSAULT PROGRAMS AND SHELTERS

75:15-17-1. Applicability

This Part is applicable to those domestic violence, batterer's intervention and sexual assault programs and shelters certified by~~, or with which ODMHSAS~~ the OAG ~~contracts~~ pursuant to ~~43A O.S., § 3-314.1~~ 74 O.S. § 18p-1 et seq.

75:15-17-2. Client right to information, refused services [REVOKED]

~~A client, or potential client, has the right to know why services are refused and the program shall provide a written explanation concerning the reason he or she was refused certain services.~~

75:15-17-3. Client rights

(a) Each client shall have and enjoy all constitutional and statutory rights of all citizens of the State of Oklahoma and the United States, unless abridged through due process of law by a court of competent jurisdiction. Each program shall ensure each client has the rights which are listed below:

(1) Each client has the right to be treated with respect and dignity. This shall be construed to protect and promote human dignity and respect for individual dignity.

(2) Each client has the right to a safe, sanitary, and humane living environment.

(3) Each client has the right to a humane psychological environment protecting him or her from harm, abuse, and neglect.

(4) Each client has the right to an environment which provides reasonable privacy, promotes personal dignity, and provides opportunity for the client to improve her or his functioning.

(5) Each client has the right to receive services suited to her or his needs without regard to his or her race, religion, sex, ethnic origin, age, degree of disability, handicapping condition, legal status, or ability to pay for the services.

(6) Each client, on admission, has the absolute right to communicate with a relative, friend, clergy, or attorney, by telephone or mail, at the expense of the program if the client is indigent.

(7) Each client shall have and retain the right to confidential communication with an attorney, personal physician, or clergy.

(8) Unless superseded by provisions in 75:15-4-3 above, ~~Each~~ each client has the right to uncensored, private communications including, but not limited to, letters and telephone calls. Copies of any personal letter, sent or received, by a client shall not be kept in her or his client record without the written consent of the client.

(9) No client shall be neglected or sexually, physically, verbally, or otherwise abused.

(10) Each client shall have the right to practice his or her own religious beliefs, and be afforded the opportunity for religious worship that does not infringe on the health or safety of others. No client shall be coerced into engaging in, or refraining from, any personal religious activity, practice, or belief.

(11) Each client has the right to be provided with prompt, competent, appropriate services and an individualized service plan.

(A) The client shall be afforded the opportunity to participate in her or his service plan.

(B) The client may consent, or refuse to consent, to the proposed services.

(12) The records of each client shall be treated as confidential.

(13) Each client has the right to refuse to participate in any research project or medical experiment without informed consent of the client, as defined by law. A refusal to participate shall not affect the services available to the client.

(14) Each client has the right to assert grievances with respect to any alleged infringement of these stated rights of clients, or any other subsequently statutorily granted rights.

(15) No client shall ever be retaliated against, or subject to, any adverse conditions or services solely or partially because of having asserted her or his rights as stated in this section.

(16) Each client has the right to review his or her own records, or authorize his or her attorney or others to do so. However, where the program is providing the treatment of a mental health or substance abuse illness, the provisions of 43A O.S. § 1-109 and 42 CFR then apply. Each client also has the right that all information and records regarding him or her shall be treated as confidential.

(17) Each client has the right to know why services are refused and can expect an explanation concerning the reason he or she was refused certain services.

(b) Programs shall have written policy and procedures, and shall provide documented staff training to ~~insure~~ ensure the implementation of each and every client right stated in this section.

(c) Programs shall have written policy and procedures to ~~insure~~ ensure each client enjoys, and has explained to him or her, these rights; and these rights are visibly posted in both client and public areas of the facility.

(d) The ~~ODMHSAS Office of Consumer Advocacy~~ OAG, in any investigation or program monitoring regarding client rights, shall have unimpeded access to clients, program records and program staff.

75:15-17-4. Client'~~s~~ grievance policy and procedures

(a) Each program shall have a written client'~~s~~ grievance policy providing for, but not limited to, the following:

(1) Written notice of the grievance and appeal procedure provided to the client; and, if involved with the client, to family members or significant others;

(2) Time frames for the grievance policy's procedures, which allow for an expedient resolution of client grievances;

(A) Transitional living ~~and~~, shelter services~~'~~ , and safe home timeframes for resolution of grievances by program staff shall be seven (7) days unless appealed;

(B) Non-transitional living and non-shelter services' timeframes for resolution of grievances by program staff shall be fourteen (14) days unless appealed;

(3) Name(s) of the individual(s) who are responsible for coordinating the grievance policy and the individual responsible for or authority to make decision(s) for resolution of the grievance and the individual responsible for or authorized to make decisions for resolution of grievance. In the instance where the decision maker is the subject of a grievance, decision-making authority shall be delegated;

(4) Provide for notice to the client that he or she has a right to make a complaint to the ~~ODMHSAS Consumer Advocacy Division~~ OAG Victims Services Unit;

(5) Mechanism to monitor the grievance process and improve performance based on outcomes; and

(6) Annual review of the grievance policy and procedures, with revisions as needed.

[OAR Docket #06-1115; filed 5-26-06]

TITLE 165. CORPORATION COMMISSION CHAPTER 5. RULES OF PRACTICE

[OAR Docket #06-1132]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
Part 1. General
165:5-1-7. Procedure for adoption of rules [AMENDED]
Subchapter 3. Fees
Part 1. General Provisions
165:5-3-1. Fees [AMENDED]
Subchapter 7. Commencement of a Cause
Part 3. Oil and Gas
165:5-7-14. Tax exemptions pursuant to OAC 165:10, Subchapter 21 [AMENDED]
Part 7. Motor Carrier
165:5-7-65. Applications relating to intrastate motor carrier authority and intrastate licenses [AMENDED]
Subchapter 25. Motor Carrier Tax and Registration Protests [NEW]
165:5-25-1. Purposes and general overview of motor carrier taxpayer/registrant protest procedure [NEW]
165:5-25-2. Applications for hearing [NEW]
165:5-25-3. Representation and participation in administrative proceedings [NEW]
165:5-25-4. Burden of proof [NEW]
165:5-25-5. Effective date of the subchapter [NEW]
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Oklahoma Corporation Commission
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Subchapter 3. Fees
Part 1. General Provisions
165:5-3-1. Fees [AMENDED]
Subchapter 7. Commencement of a Cause
Part 7. Motor Carrier
165:5-7-65. Applications relating to intrastate motor carrier authority and intrastate licenses [AMENDED]
Subchapter 25. Motor Carrier Tax and Registration Protests [NEW]
165:5-25-1. Purposes and general overview of motor carrier taxpayer/registrant protest procedure [NEW]
165:5-25-2. Applications for hearing [NEW]
165:5-25-3. Representation and participation in administrative proceedings [NEW]
165:5-25-4. Burden of proof [NEW]
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None
ANALYSIS:

Existing Section 165:5-1-7(c) is amended to remove the time frame regarding the presentation of rule changes to the Storage Tank Advisory Council, to correct spelling errors and to improve language.

Existing Section 165:5-3-1(a)(1) is amended to add two new exceptions to filing fees. Anyone protesting an adverse action of the Commission pursuant to the International Fuel Tax Agreement or the International Registration Plan will not be subject to a filing fee. Nor will a filing fee be charged to anyone filing a consumer complaint against a public utility. This rule is also amended to add nominal fees for items obtained from the Transportation Division such as an International Fuel Tax Agreement decal and documents requested regarding vehicle title and lienholder information.

Existing Section 165:5-7-14 is amended to cause tax exemption applications, currently filed with the court clerk, to now be filed with the Oil and Gas Division's Technical Department. This rule is also amended to correct a typographical error.

Existing Section 165:5-7-65 is amended to delete additional publication requirements for authority applications relating to intrastate motor carriers of household goods. This rule is also amended to delete certain requirements for intrastate motor carriers or private carriers to file, publish, and set for hearing applications for licenses and renewals. An additional amendment is made to delete the requirement that all applications for an original intrastate motor carrier license shall be set for hearing. License or renewal applications for an intrastate for-hire or private motor carrier license are processed administratively, unless a protest is filed with the Court Clerk's office. This rule is amended to delete the time frame for filing such a protest.

New Subchapter 25 addresses motor carrier tax and registration protests. The procedure for filing a protest and an application for hearing is explained, along with who may represent a taxpayer/registrant at an administrative hearing. The burden of proof at such a hearing is placed upon the taxpayer/registrant. This new rule is specifically applied to all pending and future proceedings.

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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

PART 1. GENERAL

165:5-1-7. Procedure for adoption of rules.

(a) The Commission shall comply with all applicable provisions of the Administrative Procedures Act ("APA"), 75 O.S. §250 et seq., and Article IX of the Oklahoma Constitution.

(b) In addition to the statutory requirements of the APA, notice of proposed rulemaking action shall be published one time at least thirty (30) days prior to public hearing in a newspaper of general circulation published in Oklahoma County. If, however, the Commission finds that an imminent peril to the preservation of the public health, safety, welfare, or other compelling extraordinary circumstance requires an emergency rulemaking, the Commission may promulgate, pursuant to applicable provisions of the APA, any such rule without notice and hearing.

(c) All rulemakings concerning the Petroleum Storage Tank Division shall be developed as follows:

(1) **Storage Tank Advisory Council.**

(A) Pursuant to 17 O.S. ~~(Supp. 1997)~~ § 340, the Storage Tank Advisory Council ~~has the authority to~~ may recommend ~~to the Commission~~ rules to implement the Oklahoma Storage Tank Regulation Act and the Oklahoma Petroleum Tank Release Indemnity Fund Program.

(B) The staff of the Petroleum Storage Tank Division shall have no standing to recommend to the Commission en banc proposed permanent rules or changes to such rules which have not previously been submitted to the Storage Tank Advisory Council. ~~for action at least forty five (45) days prior to the hearing for adoption of the rules by the Commission en banc.~~

(C) ~~For~~ Rulemakings ~~initiated~~ proposed by the Storage Tank Advisory Council, ~~the Council~~ shall ~~depend on the Commission staff to~~ follow the applicable rulemaking procedures of the APA and the rules of the Commission.

(D) All actions of the Storage Tank Advisory Council with regard to rulemaking shall be deemed actions of the Commission for the purposes of complying with the APA.

(E) The Commission may adopt permanent rules without the advice of the Storage Tank Advisory Council or not in accord with the advi~~s~~ce of the Council. However, if any permanent rules are so adopted, the Commission shall detail the reasons on the rule report submitted to the Governor and the Legislature pursuant to the APA.

(2) **Emergency rulemakings.** The Commission may promulgate emergency rules without the ~~advise~~ advice of the Storage Tank Advisory Council when time constraints of the emergency as determined by the Commission, do not permit timely development of recommendations by the Storage Tank Advisory Council.

SUBCHAPTER 3. FEES

PART 1. GENERAL PROVISIONS

165:5-3-1. Fees

(a) **General.**

(1) **Exceptions to filing fees.** For each initial application in each category listed in (b) of this Section, a filing fee shall be paid by the person seeking to file or submit the document, unless the document is filed under authorization of and in the name of an instrumentality of the State of Oklahoma.

(A) Filing fees shall not apply to any emergency application, subsequent pleading, or amended application except a Form 1000 required in OAC 165:10-3-1(b)(A) and (B) and OAC 165:10-3-1(c).

(B) No filing fee shall be required for any application filed pursuant to OAC 165:10-21, Applications for Tax Exemptions.

(C) No filing fee shall be required for any application filed pursuant to OAC 165:5-3-31, Use of vacuum.

(D) No filing fee applicable to the conservation docket shall be required for any Notice of Intent to Mediate filed with the Office of Administrative Proceedings pursuant to OAC 165:5-23-1 et seq. A per participant fee provided in OAC 165:5-3-1(b)(1)(G) shall be charged for any informal dispute resolution procedure that commences.

(E) No filing fee shall be paid by a party filing a protest to an adverse action of the Commission pursuant to the International Fuel Tax Agreement ("IFTA") or the International Registration Plan ("IRP").

(F) No filing fee shall be paid by a party filing a Consumer Complaint against a public utility.

(2) **Filing fees.** Any filing fee assessed by this Section shall be due and paid at the time of filing of the document. Neither the Court Clerk's Office nor any division of the Commission shall accept an application subject to a filing fee until the required fee is paid. No filing fee shall be refundable.

(3) **Other fees.** Any other fee assessed by this Section shall be due and payable at the time the service is requested. No service shall be rendered before payment of the prescribed fee. No such filing fee shall be refundable.

(4) **Negotiable instruments.** Fees paid by negotiable instruments shall be made payable to the "Oklahoma Corporation Commission." Negotiable instruments include

personal checks, cashier checks, certified checks, and money orders. Foreign checks must be payable through a United States bank in United States funds.

(5) All fees pertaining to the Petroleum Storage Tank Division are listed in OAC 165:5-3-2.

(b) **Schedule of filing fees.**

(1) **Oil and gas fees.**

(A) Commercial disposal well application - $1,000.00

(B) Commercial earthen pit application - $1,000.00

(C) Commercial soil farming site application - $1,000.00

(D) Conservation docket and other pollution docket base applications - $35.00

(E) Permit to drill - $100.00

(F) Emergency walk-thru permit to drill - $300.00

(G) Notice of Intent to Mediate pursuant to Chapter 23 of this Chapter - $5.00 per participant

(2) **Transportation fees.**

(A) Transportation docket application - $35.00

(B) Other transportation fees:

(i) Intrastate license fees.

(I) Original license application filing fee - $100.00

(II) License sub application filing fee - $100.00

(III) Renewal license application filing fee - $50.00

(IV) License reinstatement application filing fee - $100.00

(V) License name change application filing fee - $50.00

(VI) Earthen or wash pit construction or enlargement application fee - $350.00

(ii) Intrastate certificate or permit fees.

(I) Original certificate or permit application filing fee - $100.00

(II) Certificate or permit sub application filing fee - $100.00

(III) Transfer of certificate or permit application filing fee - $100.00

(IV) Certificate or permit temporary authority application filing fee - $100.00

(V) Certificate or permit representative of estate application filing fee - $100.00

(VI) Certificate or permit reinstatement application filing fee - $100.00

(VII) Delinquent certificate or permit annual report fee - $150.00

(VIII) Certificate or permit name change application filing fee - $50.00

(IX) Voluntary suspension or abandonment of certificate or permit application filing fee - $100.00

(X) Tariff modification (requiring hearing) - $350.00

(iii) Intrastate and interstate fees.

(I) Identification device or per vehicle fee - $7.00

(II) Deleterious Substance License Permit application filing fee - $260.00

(iv) Interstate fees.

(I) Exempt application filing fee - $25.00

(II) Exempt name change - $10.00

(v) International Fuel Tax Agreement decal - $2.00 per vehicle per decal set

(3) **Utility fee.** Public utility docket application - $35.00

(4) **Consumer Services fee.** Consumer Services docket application - $35.00

(5) **Enforcement fee.** Enforcement docket application - $35.00

(c) **Certified copies.** A fee of $1.00 is charged for each certified copy of an order or other document on file with the Commission, in addition to the fees specified in (d) of this Section.

(d) **Other fees.** The following fees shall be charged and collected at the time of request for same; none of which shall ever be refundable:

(1) Certificate of non-development (maximum of one quarter section) - $10.00

(2) Mail-out copies of any file or order - flat fee to cover research, copying and postage not to exceed 30 pages.

(A) 1 to 15 pages - $5.00

(B) 16 to 30 pages - $10.00

(C) Documents exceeding 30 pages - $0.25 per page plus postage

(3) Microfilmed images from coin-operated microfilm reader (coin box) - $0.25

(4) Batch reproduction on continuing basis (per page) - $0.25

(5) Copy of any document prepared in OCC offices (per page) - $0.25

(6) Copy of any Chapter of Commission rules and regulations - $10.00

(7) Copy of Oil and Gas Conservation rules - $20.00

(8) Current ownership/lienholder information - $1.00 per vehicle record page

(9) Computer generated title history - $5.00 per vehicle

(10) Manual title history - $7.50 per vehicle

(11) Copy of lien release - $7.50 per vehicle

(12) Certified copy of lien release - $10.00 per vehicle

(13) Certified copy of title history - $10.00 per vehicle

(e) **Computer data processing documents.** Reproduction of documents or informational searches involving computer data processing services will be in accordance with the rates established by the Oklahoma Office of State Finance, Information Services Division.

(f) **Document search fee.** Except where provided otherwise by law, where the request for document copying and/or mechanical reproduction is solely for commercial purpose or clearly would cause excessive disruption of the Commission's essential functions, then a fee of $7.00 per hour (minimum of one hour) shall be charged to recover the direct cost of document search.

(g) **Fax.** A service charge of $5.00 plus $1.00 per page will be assessed for all outgoing faxes. All incoming faxes for persons not associated with the Commission shall be assessed a copy fee of $0.25 per page including the cover page when not submitted for filing with the Court Clerk's Office.

SUBCHAPTER 7. COMMENCEMENT OF CAUSE

PART 3. OIL AND GAS

165:5-7-14. Tax exemptions pursuant to OAC 165:10, Subchapter 21

(a) **Form of application.**

(1) Each application under OAC 165:10-21, Part 13 shall be filed with the ~~Court Clerk~~ Technical Department on an OCC Form 1139 with the exhibits required by OAC 165:10-21, Part 13.

(2) Each application under OAC 165:10-21, Parts 6, 7, 8, 9, 11 and 14 shall be filed with the ~~Court Clerk~~ Technical Department on an OCC Form 1534 with the exhibits required by the provisions of OAC 165:10-21, which pertain to each specific gross production tax exemption.

(3) Each application under OAC 165:10-21, Part ~~14A~~ 17 shall be filed with the ~~Court Clerk~~ Technical Department on an OCC Form 1535 with the exhibits required by the provisions of OAC 165:10-21, which pertain to sales tax exemptions for electricity sold to operate reservoir dewatering projects.

(b) **Referral to Conservation Division.** Upon filing of the application with required exhibits, the Commission shall refer the matter to the Conservation Division for the purpose of reviewing the application and making findings and recommendations by report to the Commission.

(c) **Notice.** No notice shall be required.

(d) **Right to hearing if application recommended for denial or modification.** If the Conservation Division recommends denial or modification of the application, then the applicant may move for a hearing de novo within ten (10) days after the date of report denying the application.

(e) **Appeal.** Any person adversely affected by the report of the Conservation Division may appeal said report subject to requirements of OAC 165:5-13-5.

PART 7. MOTOR CARRIERS

165:5-7-65. Applications relating to intrastate motor carrier authority and intrastate licenses

(a) Notice of an application relating to intrastate motor carrier of household goods authority shall be published prior to hearing once each week for two (2) consecutive weeks as follows:

(1) For original or sub certificate or permit as an intrastate motor carrier of household goods in a newspaper of general circulation published in the county seat or the largest city of the county of the applicant's principal place of business; or,

(2) For transfer of intrastate certificate or permit of household goods in a newspaper of general circulation published in the county seat or the largest city in the county in which is located the principal place of business of the transferor and transferee.

(b) Notice of an application for a rate or tariff change requiring a hearing shall be published prior to hearing once each week for two (2) consecutive weeks in a newspaper of general circulation published in Oklahoma and Tulsa Counties.

(c) Any non-resident of Oklahoma shall be deemed to have its place of business in Oklahoma County for the purpose of this Section.

(d) All other types of authority applications relating to intrastate motor carriers of household goods shall be published in the Commission's Transportation Docket. ~~No additional publication shall be required unless ordered by the Commission or by law.~~

~~(e) All applications for an intrastate motor carrier or private carrier license or renewal of an intrastate motor carrier or private carrier license shall be filed with the Court Clerk's Office and published in the Commission's Transportation Docket. No additional publication shall be required unless ordered by the Commission or by law.~~

~~(f) All applications for an original intrastate motor carrier license shall be set for hearing, unless exempted through provisions provided in 165:30. Applications exempted from hearing shall be processed in accordance with the provisions in subsection (g) of this section.~~

(~~g~~e) Applications for an intrastate for-hire motor carrier license or ~~original~~ intrastate private motor carrier license, renewal of an intrastate for-hire motor carrier license or renewal of an intrastate private motor carrier license shall be processed administratively unless a protest is filed with the ~~court~~ Court Clerk's office ~~during the protest period (one week after publication on the Transportation Docket)~~ or the staff of the Transportation Division requests the application be set for hearing.

SUBCHAPTER 25. MOTOR CARRIER TAX AND REGISTRATION PROTESTS

165:5-25-1. Purpose and general overview of motor carrier taxpayer/registrant protest procedure

(a) The purpose of this Subchapter is to give the International Fuel Tax ("IFTA") taxpayer ("taxpayer") or International Registration Plan ("IRP") registrant ("registrant"), or the taxpayer's/registrant's representative an opportunity to resolve "IFTA" or "IRP" disagreements with the Commission.

(b) Taxpayers/Registrants who wish to challenge a liability assessed or other adverse actions by the Transportation Division, or to seek a refund of taxes or fees, shall file a written protest with the Transportation Division within thirty (30) days from the date of notification of the adverse action. Notification is deemed to be the date of the notice of the adverse action. A

protest by the taxpayer/registrant should include the reason(s) for the protest.

(c) The Transportation Division shall respond to the protest within thirty (30) days of receipt of the protest. The response shall advise the taxpayer/registrant the status of the review of the protest and advise of any additional documentation needed.

(d) The taxpayer/registrant may contest the Transportation Division's final decision within thirty (30) days from the date of the mailing of the notice. The taxpayer/registrant must file an application with the Commission's Court Clerk's office in accordance with OAC 165:5-25-2 to contest the final decision.

165:5-25-2. Applications for hearing

Taxpayer or Registrant applications for hearing shall be filed with the Commission's Court Clerk's Office. Applications shall be in writing, signed by the taxpayer/registrant, or an authorized representative thereof, and shall set out therein:

(1) The name, mailing address, physical address, telephone number, e-mail address, and social security number or employer's identification number of the taxpayer/registrant;

(2) A statement of the amount of the deficiency as determined by the Transportation Division in the proposed assessment, the nature of the tax or fee and the amount thereof in controversy, or the denial of base state registration;

(3) A clear and concise statement of each item in dispute;

(4) The argument and any legal authority upon which each item in dispute is made; provided, that the taxpayer/registrant shall not be bound or restricted in such hearing, except on appeal, to the arguments and legal authorities contained and cited in said applications or presented in the initial hearing;

(5) A statement of the relief sought by the taxpayer/registrant;

(6) A verification by the taxpayer/registrant or his duly authorized agent that the statements and facts contained therein are true; and

(7) In a refund claim, a statement as to whether the basis for the claim request is due to a mistake of law or a mistake of fact with a brief explanation of the mistake.

165:5-25-3. Representation and participation in administrative proceedings

(a) Representation. In an administrative proceeding the taxpayer/registrant may represent himself/herself at any stage of the proceeding or may be represented by:

(1) A corporation;

(2) An attorney;

(3) An accountant, but only in a tax protest matter; or,

(4) A representative who has been pre-approved by the Commission to represent the taxpayer/registrant.

(b) Proper showing may be required. If a taxpayer/registrant wants to be represented by someone other than himself, an attorney, or an accountant, the Administrative Law Judge may require that such other person, before being recognized as a representative of the taxpayer/registrant, make a proper showing of necessary qualifications to enable the representative to render such services to the taxpayer. Upon such showing by the representative, the Administrative Law Judge may certify the representative.

165:5-25-4. Burden of proof

In all administrative proceedings, unless otherwise provided by law, the burden of proof shall be upon the taxpayer/registrant to show in what respect the action or proposed action of the Commission is incorrect. If, upon hearing, the taxpayer/registrant fails to make a prima facie case, the Administrative Law Judge may recommend that the Commission deny the application solely upon the grounds of failure to prove sufficient facts which would entitle the taxpayer/registrant to the requested relief.

165:5-25-5. Effective date of the Subchapter

The provisions of this Subchapter shall govern all proceedings and cases commenced after this Subchapter becomes effective, and all subsequent proceedings in cases then pending, except to the extent that in the opinion of the Commission or the Administrative Law Judge, the application of this Subchapter in a pending case would not be feasible or would create an injustice.

[OAR Docket #06-1132; filed 5-26-06]

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

[OAR Docket #06-1130]

RULEMAKING ACTION:
PERMANENT final adoption
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INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
OAC 165:10-5-5(b) is amended to remove the wording "Resource Conservation Department" and replace it with "Manager of Underground Injection Control".

OAC 165:10-5-5(d)(2) is amended to add the following sentence to the paragraph "The production casing will not be allowed to also serve as the surface casing".

OAC 165:10-5-5(d)(3) is amended to delete the language "application will be approved" from the last sentence and to replace it with "well may be used for injection or disposal".

OAC 165:10-5-6(b)(2)(D) is amended to change "20 feet" to "40 feet" and to add to the end of the sentence "or within 75 feet of the perforations of the injection zones(s) opened".

OAC 165:10-5-6(e)(4) is amended to delete the word "significant" and to add after the word "increase" the words "of 250 psig".

OAC 165:10-7-3(a) is amended to delete the words "Department of Pollution Control", and after those words to add "Department of Environmental Quality".

OAC 165:10-7-16(e)(9)(C) is amended to add after "(TDS)" the wording "or Total Soluble Salts (TSS)".

OAC 165:10-7-17(b)(2)(C) is amended to delete "(TSS)", and in the second sentence to delete "TSS" and add "Total Suspended Solids".

OAC 165:10-7-17(d)(2)(A) is amended to add the wording "or Total Soluble Salts (TSS)" after "(TDS)".

OAC 165:10-7-17(f)(1) is amended to delete the words "Oklahoma Water Resources Board" and to replace it with "Department of Environmental Quality or in the North American Proficiency Testing System,"

OAC 165:10-7-17(f)(2) is amended to add after ("TDS)" the wording of "or Total Soluble Salts (TSS)".

OAC 165:10-7-17(i)(7) is amended to change the date from "February 1" to "April 1".

OAC 165:10-7-17(i)(8) is amended to delete the wording "and soil shall be sampled and" and replace it with the wording "shall be analyzed annually and the receiving soils shall be sampled and analyzed a minimum of every fie (5) years,"; and at the end of that same sentence to delete the wording "on an annual basis just prior to filing of the annual report". In the next section it is amended to delete the wording "a soil analysis indicates that" and in the same sentence delete the word "rate", and to add to after the wording "exceeds 11," the wording "water and soil".

OAC 165:10-7(i)(9) is amended to delete "(TDS)" and to add "(TSS)".

OAC 165:10-7-19(b) is amended to delete the wording "on a one time basis" and to add to the very end of the sentence the wording "for at least three (3) years.".

OAC 165:10-7-19(c)(8) is amended by adding this section with the following wording: "(8) Stockpiling of cuttings. Stockpiling of cuttings may be used during the handling and transportation of the cuttings both at the well location and the receiving site. At the well site the cuttings must be placed in a steel pit or the areas used for this practice must be lined and bermed if required by the District Office. A stockpile of cuttings at the receiving site must be located on the permitted area. The stockpile of cuttings, whether at the well location or the receiving site, must be closed within 30 days of cessation of drilling operations."

OAC 165:10-7-19(e)(1)(A) is amended to delete the wording "proficient in testing soils", and to add the wording "operated by the State of Oklahoma or certified by the Oklahoma Department of Environmental Quality or in the North American proficiency Testing System."

OAC 165:10-7-19(e)(1)(B) is amended to add the wording after the word "Quality", "or in the North American Proficiency Testing System."

OAC 165:10-7-19(g)(1)(A) is amended to add the wording "or TSS" after each time the letters "TDS" are mentioned.

OAC 165:10-7-19(g)(2)(A) is amended to add the wording "or TSS" after each time the letters "TDS" are mentioned.

OAC 165:10-7-19(h)(11)(B) is amended to change the number of days from "180" to "90".

OAC 165:10-7-19(h)(12) is amended to change the number of days from "30" to "90".

OAC 165:10-7-22(C) (3)(B) is amended to delete the words "state certified" and after the word "laboratory" add the wording "certified or operated by the state of Oklahoma".

OAC 165:10-7-26(e)(1) is amended to add the words "or Total Soluble Salts (TSS) after the wording "Total Dissolved Solids (TDS)".

OAC 165:10-7-26(e)(2)(c) is amended to delete the wording "Diesel Range Organics (DRO) C10 to C28 (extractable procedure), and Oil and Grease C20 to C50+ (EPA test method 1664)" and to add the wording "TPH (Oklahoma method 1005 extended C35)."

OAC 165:10-7-26(f)(1) is amended to add the wording "or TSS," after the wording "TDS" and following the new wording "TSS" should be the letters "CI," and delete the word "(or)"and delete the letters "DRO," and "O & G"; the letters "CI," are also listed two more times in the paragraph, where the "CI," is listed the word "(or)" should be deleted.

OAC 165:10-7-27(c)(4)(B) is amended to delete the words "state certified", and after the word "laboratory" the wording "that is state operated or certified" should be added.

OAC 165:10-7-28(e)(2) and for (3) are amended to add at the end of the sentence the wording "or Total Soluble Salts (TSS)".

OAC 165:10-7-28(f)(1) is amended to add the wording "OR TOTAL SOLUBLE SALTS (TSS)" after the words "PROCEDURE FOR CALCULATING APPLICATION RATE OF TOTAL DISSOLVED SOLIDS (TDS)"; and in the remainder of the section wherever the letters "TDS" are listed the word and letters are added "or TSS".

OAC 165:10-7-29(e)(1) and (2) are amended to add the wording "or Total Soluble Salts (TSS) after the letters "(TDS)".

OAC 165:10-7-29(f)(1) is amended to add the wording "OR TOTAL SOLUBLE SALTS (TSS)" after the words "PROCEDURE FOR CALCULATING APPLICATION RATE OF TOTAL DISSOLVED SOLIDS (TDS)"; and in the remainder of the section wherever the letters "TDS" are listed the word and letters are added "or TSS".

OAC 65:10-7-32(c) is amended to add the wording "or Total Soluble Salts (TSS)" after the letters "(TDS)".

OAC 165:10-21-23(2) is amended to delete the wording "an order of the Oklahoma Corporation Commission shall be issued, and a copy of the order", and in place of the deleted wording add the wording of "a copy of the approved application".

OAC 165:10-21-24 (1) is amended to delete the wording "A Corporation Commission order" and to add the wording "A copy of the application approved by the Corporation Commission".

OAC 165:10-21-24 (2) is amended by the entire wording being deleted and replaced by the wording "A properly completed OTC Form 328 Gross Production 841/485 Refund Report".

OAC 165:10-21-24(3) is amended by all of the wording being deleted and replaced by the wording "If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund".

OAC 165:10-21-24(4) is deleted.

OAC 165:10-21-37(2) is amended by deleting the wording "an order of the Oklahoma Corporation Commission shall be issued, and a copy", and by adding new wording of "a copy of the approved application".

OAC 165:10-21-38(a)(1) is amended by deleting the wording "A Corporation Commission order" and by adding the wording "A copy of the application approved by the Corporation Commission".

OAC 165:10-21-38(a)(2) is amended by deleting all the wording and it is replaced by the wording of "A copy of an approved OTC Form 320C that shows the date of the reestablishment of production of oil and/or gas".

OAC 165:10-21-38(a)(3) is amended by deleting all the wording and it is replaced by the wording of "A properly completed OTC Form 328 Gross Production 841/495 Refund Report".

OAC 165:10-21-38(a)(4) is amended by deleting all the wording and it is replaced by the wording of "If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund".

OAC 165:10-21-45(c) is amended by deleting the year "2000" and adding the year "1997".

OAC 165:10-21-45(d) is amended by deleting the year "2006" and adding the year "2002".

OAC 165:10-21-45(e) is amended by deleting the word "between" in two places and by deleting the words "and June 30, 2006" in two places and by adding the words in two places "on or after July 1, 2002".

OAC 165:10-21-45(e)(1) and (2) and (3) are amended by adding the wording after the word "feet":

(1) "and spudded between July 1, 2002 and June 30, 2006."

(2) "and spudded between July 1, 2002 and June 30, 2008."

(3) "and spudded between July 1, 2002 and June 30, 2008."

OAC 165:10-21-47(2) is amended to delete the wording "an order of the Oklahoma Corporation Commission shall be issued, and a copy" and replaced by the wording "a copy of the approved application".

OAC 165:10-21-47(4) is amended by being added, the wording to be added is: "When processing applications for qualification for an exemption for Deep Wells as provided in this Section, the Oklahoma Corporation Commission shall give priority to those applications filed for an exemption pursuant to OAC 165:10-21-45(e)(2) and OAC 165:10-21-45(e)(3) in order for applications to comply with the six-month filing period as provided for in Title 68 O.S., Section 1001(H)(5). The application should be filed within six (6) months after the first day of the fiscal year in which the refund is first available".

OAC 165:10-21-47.1(a)(1) is amended by deleting the wording "A Corporation Commission order" and by adding the wording "An application approved by the Corporation Commission".

OAC 165:10-21-47.1(a)(2) is amended by deleting the wording and replacing it with the wording "A copy of an approved OTC Form 320A that shows date of first sale of production".

OAC 165:10-21-47.1(a)(3) is amended by deleting the wording and replacing it with the wording "A properly completed OTC Form 328 Gross Production 841/495 Refund Report".

OAC 165:10-21-47.1(a)(4) is amended by deleting the wording and replacing it with the wording "If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.

OAC 165:10-21-47.1(a)(5) is amended by being deleted.

OAC 165:10-21-47.1(b) is amended by adding the date of "and July 1, 2005" after the date of "July 1, 2003", and is further amended by deleting the word "Section" and adding the symbol for section; and is also amended by adding the sentences: "Effective July 1, 2005, claims for rebate provided in OAC 165:10-21-45(e)(2) and OAC 165:10-21-45(e)(3) filed with the Oklahoma Tax Commission shall be subject to a time limitation pursuant to Title 68 O.S. S1001(H)(5). The application should be filed within six (6) months after the first day of the fiscal year in which the refund is first available.

OAC 165:10-21-57(2) is amended by deleting the wording "an order of the Oklahoma Corporation Commission shall be issued, and a", and by adding the words "an approved".

OAC 165:10-21-58(a)(1) is amended by adding at the beginning of the sentence "copy of the application approved by the" and by deleting the word "order".

OAC 165:10-21-58(a)(2) is amended by deleting all the wording and by adding the wording "A copy of an approved OTC Form 320A that shows date of the first sale of production.

OAC 165:10-21-58(a)(3) is amended by deleting all the wording and by adding the wording "A properly completed OTC Form 328 Gross Production 841/495 Refund Report".

OAC 165:10-21-58(a)(4) is amended by deleting all the wording and by adding the wording "If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund".

OAC 165:10-21-58(a)(5) is deleted.

OAC 165:10-21-67(a)(2) is amended by deleting the wording "an order of the Oklahoma Corporation Commission shall be issued, and" and the wording "of the order".

OAC 165:10-21-68(a)(1) is amended by adding at the beginning of the sentence the wording "copy of the application approved by the" and by deleting the word "order".

OAC 165:10-21-68(a)(2) is amended by deleting all of the wording and by adding the wording "A copy of an approved OTC Form 320A that shows the date of initial production.

OAC 165:10-21-68(a)(3) is amended by deleting all the wording and by adding the wording "a properly completed OTC Form 328 Gross Production 841/495 Refund Report".

OAC 165:10-21-68(4) is amended by deleting all the wording and by adding the wording "If the refund request is filed by any person other than the party named in the application, a notarized affidavit, signed by the party named in the application must be filed, authorizing the applicant to apply for the refund.

OAC 165:10-21-68(5) is deleted.

OAC 165:10-21-77(1) is amended by deleting the wording "Application to Oklahoma Corporation Commission" and by deleting the word "order"; and by adding the wording "Administrative approval and".

OAC 165:10-21-77(1)(A) is amended by deleting the word "administratively" and the wording "an order of the Oklahoma Corporation Commission shall be issued"; and by adding the wording "a copy shall be forwarded to the operator".

OAC 165:10-21-77(1)(B) is amended by deleting the wording Oklahoma Tax Commission order", and by adding the wording "approved application".

OAC 165:10-21-77(2)(A) is amended by adding at the beginning of the sentence the wording "A copy of the approved application by the" and by deleting the wording "Order approving such application and".

OAC 165:10-21-82.2(b) is amended to delete the wording "Application to OCC" and the word "order" and change the wording to "Administrative approval and determination".

OAC 165:10-21-82.2(b) (1) is amended to delete the wording "an order of the OCC" and the word "issued", and change it to "a copy" and "forwarded to the operator".

OAC 165:10-21-82.2(b) (3) is amended to delete the wording "upon approval through issuance of a Commission order" and change it to "upon approval" of the application.

OAC 165:10-21-82.3(a)(4) is amended to delete the wording "OCC order" and the word "order" and change it to "application" which is listed twice.

OAC 165:10:21-92(c)(1) is amended to delete the wording "an order of the OCC" and the word "issued" and change them to " a copy" and "forwarded to the operator".

OAC 165:10:21-92(c)(3) is amended to delete the wording "upon approval through issuance of a Commission order" and change the wording to "upon the approval of the application".

OAC 165:10-21-92(c) is amended to add the following: SALES TAX EXEMPTION FOR ELECTRICITY SOLD FOR OPERATION OF ENHANCED RECOVERY METHODS ON A SPACING UNIT OR LEASE.

OAC 165:10-21-85 is amended to clarify language regarding tax refunds.

OAC165:10:21-92 is amended as it relates to OAC 165:5-7-14 Tax Exemptions, and to eliminate language referring to "Commission Orders".

OAC 165:10-21-95.is amended to add new language regarding enhanced recovery.

OAC 165:10-21-96. Is amended to add new definitions for this chapter.

OAC 165:10-21-97. Is amended to add new qualification procedures for this chapter

CONTACT PERSON:

Sally Shipley (405) 521-4258

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

SUBCHAPTER 5. UNDERGROUND INJECTION CONTROL

165:10-5-5. Application for approval of enhanced recovery injection and disposal operations

(a) Each application for approval of a well for use as an injection well or disposal well shall be filed in accordance with 165:5-7-27.

(b) In addition to the requirements of 165:5-7-27, the ~~Resource Conservation Department~~ Manager of Underground Injection Control may request the applicant to submit the following information as a prerequisite to approval of the application:

(1) For those wells included in 165:5-7-27(b)(1) which penetrate the top of the injection interval, a tabulation of the wells indicating the following information, if available, from public records:

(A) Dates the wells were drilled.

(B) The present status of the wells.

(C) The identity of any abandoned well which was improperly plugged or remains unplugged.

(2) A list of the following information, if available, to the applicant:

(A) The shut-in bottom hole formation pressure in psi; or the stabilized shut-in surface pressure and fluid level in the proposed injection well.

(B) The permeability of the proposed injection zone expressed in millidarcies.

(C) The porosity of the proposed injection zone expressed as a percentage of pore volume.

(D) Documentation of the methods used to arrive at the data requested above.

(c) An order authorizing an enhanced oil recovery injection well or a disposal well or a commercial disposal well will expire and become null and void if no well completion report (Form 1002A) is filed within six months from the date of completion or recompletion of the well.

(d) In addition to the well construction requirements as set out in 165:10-3-1, commercial saltwater disposal wells shall comply with the following requirements:

(1) At a minimum, the well shall be constructed with a wellhead, surface casing, production casing, tubing, and packer.

(2) The surface casing shall be set and cemented at least fifty (50) feet below the base of the treatable water bearing zone. The production casing will not be allowed to also serve as the surface casing.

(3) The production casing must be set and cemented through the injection zone with the cement circulated behind the casing to a height at least two hundred fifty (250) feet above the disposal zone. A cement bond log showing quality and placement of the cement must be furnished to and approved by the Commission before the ~~application will be approved~~ well may be used for injection or disposal. ~~The production casing will not be allowed to also serve as the surface casing.~~

(4) The annulus between the tubing and the casing must be open from the surface to the packer to allow for pressure testing and monitoring of the injection tubing and packer and the annulus filled with a packer fluid that protects against corrosion.

(5) The packer must be set at least within seventy-five (75) feet of the top of the perforations.

(6) Adequate gauges shall be installed on each annulus to allow proper monitoring of the disposal operation.

(7) Tubing must be internally coated or lined to prevent corrosion from injected fluids. PVC, Plastic Coated, Stainless Steel or Fiberglass will qualify.

(8) The packer must either internally coated or stainless steel.

(9) Commercial disposal wells authorized with a positive injection pressure must be equipped with a down hole shut-off device with a seal divider installed between the packer and the tubing. A Stainless Steel Profile Nipple and an "ON-OFF" Tool will qualify under this Section.

(e) No Commercial disposal well will be permitted whose injection pressure approaches or exceeds the demonstrated frac gradient of the injection zones(s).

(f) All permitted injection zones must be completed for injection. Authorization for any zones not initially completed as an injection zone will expire within 60 days following initial completion or recompletion date.

165:10-5-6. Testing and monitoring requirements for enhanced recovery injection wells and disposal wells

(a) **Mechanical integrity during injection.** The operator of an injection, disposal or commercial disposal well must maintain mechanical integrity in order to continue operation of the well.

(b) **Initial pressure test requirements for wells permitted on or after December 2, 1981.**

(1) **Mandatory initial mechanical test.** Before commencement of operation, each well authorized for enhanced recovery injection or disposal by a Commission order issued on or after December 2, 1981, must pass an initial pressure test of the casing tubing annulus according to the minimum testing standards of (2) of this subsection, unless a Commission order permits other test procedures of the mechanical integrity of the well. Any operator failing to comply with initial mechanical integrity testing and reporting requirements shall be subject to a fine of $500.00.

(2) **Minimum testing standards for initial tests.** For each initial test required by (1) of this subsection, the minimum testing standards are:

(A) **Witnessing of the test.** The test shall be witnessed by an authorized representative of the Conservation Division. It shall be the responsibility of the well operator to secure the presence of the Commission representative.

(B) **Down-hole equipment.** Injection and disposal shall be through adequate tubing and packer.

(C) **Aboveground extensions and fittings.** Adequate aboveground extensions shall be installed in each annulus in the well. In addition, the operator shall install a one-fourth (1/4) inch female fitting, with cutoff valve to the tubing, so that the amount of injection pressure may be measured by the Commission representative using a gauge having a one-fourth (1/4) inch male fitting.

(D) **Packer setting depth under the order.** The mechanical packer shall be set within ~~20~~ 40 feet of the packer setting depth prescribed by the order permitting the well for injection or within 75 feet of the perforations of the injection zone(s) opened.

(E) **Verification of packer setting depth.** The Commission District Manager may require the operator of the well to verify the packer setting depth by running a wireline or other method approved by the Manager of the Underground Injection Control Department.

(F) **Minimum testing pressure.** Noncommercial disposal and injection wells shall be tested as follows:

(i) If the maximum authorized injection pressure for the well is less than 300 psig under the order permitting the well for injection, the minimum testing pressure shall be 300 psig.

(ii) If the maximum authorized injection pressure is greater than 300 psig under the order permitting the well for injection, the minimum testing pressure shall be the lesser of 1000 psig or the maximum authorized injection pressure under the order permitting the well.

(G) **Thirty minute minimum testing period.** The minimum testing period shall be 30 minutes at the testing pressure.

(H) **Ten percent maximum permitted bleed-off.** The maximum permitted bleed-off during the testing period shall be ten percent of the maximum testing pressure used.

(I) **Test report on Form 1075.** The operators shall submit the results of the mechanical integrity test on Form 1075 within 30 days from the date the test is performed.

(J) **Cement circulated above injection zone.** The minimum cement height circulated above the injection or disposal zone in the annulus between the casing and the borehole shall be 250 feet.

(K) **Packer setting depth.** The packer must be set at a depth which is at least 50 feet below the depth of the top of cement behind the production casing.

(3) **Alternative testing procedures.** Operators can test at a maximum of 500 psi if there is in place an automatic and continuous pressure monitor on the tubing-casing annulus that will shut-in the well if there is a ~~significant~~ pressure increase of 250 psi on the annulus. Application for this alternative test procedure shall be made in writing to the Manager of the UIC Department.

(4) **Use of fluid seal without a mechanical packer.** Use of a fluid seal without a mechanical packer is prohibited.

(c) **Initial pressure test requirements for wells permitted prior to December 2, 1981.**

(1) **Mandatory initial pressure test or monitoring test.**

(A) Each well authorized for enhanced recovery injection or disposal by Commission order issued prior to December 2, 1981, must pass an initial mechanical integrity test according to the minimum testing standards of (2) of this subsection.

(B) In lieu of casing test required in (A) of this paragraph, the operator shall monitor and record during actual injection the pressure in the casing-tubing annulus monthly and report the pressure annually on Form 1075. A measurable positive pressure must be maintained at the casing valve and be continuously measured to qualify.

(2) **Minimum testing standards for initial mechanical integrity tests.**

(A) **Wells with casing-tubing annulus.** The minimum testing standards of (a)(2) of this Section for an initial test of a well with a casing tubing annulus shall apply with the following modifications:

(i) The District Manager shall have the option to waive witnessing of the test.

(ii) If the test is not witnessed, the well operator shall submit documentation of the test to the Conservation Division within 30 days after the test on Form 1075.

(iii) The minimum testing pressure shall be 200 psig.

(B) **Wells without a casing-tubing annulus or wells with perforations above the packer.** The minimum testing standards for an initial test of a well without a casing-tubing annulus or wells with perforations above the packer are:

(i) **Witnessing of the test.** The test shall be witnessed by an authorized representative of the Conservation Division unless the District Manager for the Conservation Division waives the requirement of witnessing the initial test. It shall be the responsibility of the well operator to secure the presence of the commission representative for witnessing the test.

(ii) **Documentation for unwitnessed tests.** If the test is not witnessed, then the operator shall submit on Form 1075 documentation of the test to the Conservation Division within 30 days after the test.

(iii) **Aboveground extensions and fittings.** The operator shall install a one-fourth (1/4) inch female fitting, with cutoff valve to the tubing, so that the amount of injection pressure may be measured by the Commission representative using a gauge having a one-fourth (1/4) inch male fitting.

(iv) **Setting depth for plug.** For purposes of the test, a mechanical packer, retrievable bridge plug, or seating nipple plug shall be placed in the injection string not more than 75 feet above the top of the injection interval.

(v) **Pressure testing of tubing string.** The well operator shall pressure test the tubing string for at least 30 minutes. The minimum testing pressure shall be the greater of 300 psig, or the maximum authorized injection pressure provided that the actual working injection pressure for the well may be used instead of the maximum authorized injection pressure when necessary to prevent damage to the casing or packer.

(vi) **Ten percent maximum permitted bleed-off.** The maximum permitted bleedoff during the testing period shall be ten percent of the maximum testing pressure used.

(vii) **Radioactive tracer survey.** A radioactive tracer survey shall be run demonstrating that the injected fluid is going into the authorized zone when there is no cement bond log or cementing

reports to demonstrate sufficient cement behind pipe to isolate the injection zone or to insure the packer is properly set.

(viii) **Pressure test using a gas media.** In lieu of a pressure test using a liquid testing media, the UIC Department may approve a mechanical integrity test using a gas media if it conforms to a method previously approved by the EPA.

(ix) **Test report on Form 1075.** The operator shall submit the results of the mechanical integrity test on Form 1075 to the Conservation Division within 30 days after the test.

(d) **Subsequent mechanical integrity test requirements.**

(1) **Pressure test every five years.** Unless a well has been approved by an order of the Commission for other testing procedures or monitoring, each well permitted for injection shall demonstrate mechanical integrity at least once every five years according to the minimum testing standards of (3) of this subsection. Any operator failing to comply with periodic mechanical integrity testing and reporting requirements shall be subject to a fine of $500.00.

(2) **Required retest if down-hole equipment is moved or replaced.** After a well passes a pressure test required by this Section, if the operator moves the packer or replaces either the packer or the tubing, then the operator shall retest the well according to the minimum testing standards of (3) of this subsection.

(3) **Minimum testing standards.**

(A) **Wells with casing-tubing annulus.** For a five year test or retest required by this subsection, the minimum testing standards of (a)(2) of this Section shall apply to wells with casing-tubing annulus with the following modifications:

(i) The District Manager shall have the option to waive witnessing of the test.

(ii) If the test is not witnessed, the well operator shall submit documentation of the test to the Conservation Division within 30 days after the test.

(iii) The minimum testing pressure shall be:

(I) 200 psig for a noncommercial well.

(II) 300 psig or the authorized injection pressure, whichever is greater, for commercial disposal wells.

(B) **Wells without a casing-tubing annulus or wells with perforations above the packer.** For a five year test or retest required by this subsection, the minimum testing reporting standards of (b)(3)(B) of this Section, shall apply to wells without a casing-tubing annulus or wells with perforations above the packer.

(C) **Wells with automatic monitoring of positive tubing-casing pressure.** Subsequent pressure tests will not be required if there is in place a pressure monitor on the annulus to demonstrate the maintenance of a certain, positive pressure. This monitor will be connected to an automatic alarm or a continuous chart recorder. Application for this alternative shall be made in writing to the Manager of the UIC Department. Monitoring records will be sent annually attached to Form 1012 to the UIC Department.

(e) **Monitoring requirements.**

(1) **Report on Form 1075.** In lieu of a mechanical integrity test every five years, the operator of a well permitted for injection or disposal may demonstrate the mechanical integrity by:

(A) Monitoring and recording the injection rate, volume, and casing-tubing annulus pressure monthly.

(B) Submitting to the Conservation Division the results of monthly monitoring for the calendar year on Form 1075 by the first day of April of the next calendar year.

(2) **Required positive casing-tubing annulus pressure.** A measurable positive pressure must be maintained at the casing valve and be continuously measured to qualify for mechanical integrity.

(f) **Testing requirements for commercial disposal wells.**

(1) **Before commencement of operation.** Before commencement of operation, each commercial disposal well must pass a pressure test of the casing tubing annulus.

(2) **Minimum testing standards.**

(A) The test shall be witnessed by an authorized representative of the Conservation Division.

(B) The well shall be tested at the maximum authorized injection pressure, but not less than 300 psig.

(C) The minimum testing period shall be thirty (30) minutes.

(D) The maximum allowable change in pressure during the testing period shall be ten percent (10%) of the testing pressure.

(E) The results of the test shall be submitted on Form 1075 within 30 days from the date of the test.

(3) **Subsequent mechanical integrity tests.**

(A) The well shall be tested a minimum of every twelve (12) months.

(B) After a well passes a pressure test required by this Section, if the operator moves the packer or replaces the packer or tubing, then the operator shall notify the Commission and retest the well according to the minimum testing standards of (2) of this subsection.

(4) **Alternative testing procedures.** Operators can test at a maximum of 500 psi if there is in place an automatic and continuous pressure monitor on the tubing-casing annulus that will shut-in the well if there is a ~~significant~~ pressure increase of 250 psig on the annulus. Application for this alternative test procedure shall be made in writing to the Manager of the UIC Department.

SUBCHAPTER 7. POLLUTION ABATEMENT

PART 1. GENERAL PROVISIONS

165:10-7-3. Cooperation with other agencies

(a) The rules of this Subchapter shall not be construed as modifying the rights, obligations, or duties of any person under any law of this State or under any order, rule, or regulation of the Oklahoma Water Resources Board, State Department of Health, Oklahoma Wildlife Conservation Commission, State Board of Agriculture, ~~Department of Pollution Control~~ Department of Environmental Quality, or any other agency of this State with respect to the pollution of fresh water.

(b) Whenever a written complaint against any person is filed with the Commission alleging pollution as prohibited by 165:10-7-5, the Manager of Pollution Abatement shall immediately initiate such action as may be necessary or appropriate to abate the pollution.

(c) OPERATORS TAKE NOTE: Federal statutes, such as the Bald Eagle Protection Act (16 U.S.C. Sections 668-668d), the Migratory Bird Treaty Act (16 U.S.C. Sections 703-711), the Endangered Species Act (16 U.S.C. Sections 1531-1542), and the Lacey Act Amendments of 1981 (16 U.S.C. Sections 3371-3378), dictate substantial fines and penalties for persons who allow birds of certain species to become fatally injured due to incidental contact with oil or oil by-products. These fines may be levied upon persons allowing such fatalities to occur, whether accidental or not. Misdemeanor and felony convictions may include imprisonment. Information on affected bird species, regulations under these Acts, and measures which can be taken to prevent such occurrences, such as the netting or covering of open-topped tanks and pits which contain oil or oil by-products, can be obtained from the U.S. Fish and Wildlife Service Office in Oklahoma City or the nearest Oklahoma Department of Wildlife Office.

PART 3. STORAGE AND DISPOSAL OF FLUIDS

165:10-7-16. Use of noncommercial pits

(a) **Scope.** This Section shall cover the permitting, construction, operation, and closure requirements for any noncommercial pit. A noncommercial pit is an earthen pit which is located either on-site or off-site and is used for the handling, storage, or disposal of drilling fluids and/or other deleterious substances produced, obtained, or used in connection with the drilling and/or operation of a well or wells, and is operated by the generator of the waste. This does not cover disposal well pits. (See 165:10-7-20 and 165:10-9-3.)

(b) **Liner requirements.**

(1) **Reserve/circulation and/or completion/fracture/workover pits.**

(A) To assist in determining the construction requirements for a particular proposed reserve/circulation pit, either on-site or an off-site, the operator of the pit shall indicate on Form 1000 the type of mud system(s) to be used, the maximum and average anticipated chloride concentration of the mud (based on drilling records in the area), whether or not pit fluids will be segregated, and shall furnish other information required by this Section or requested by the Commission's Technical Department.

(B) The Commission's Technical Department shall evaluate the site based upon Oklahoma Geological Survey maps and other pertinent information and shall assign one of the following categories to any proposed reserve/circulation pit, designating same on Form 1000 and indicating whether or not a liner is required:

(i) **Category 1A - Geomembrane liner.**

(I) **Water based drilling fluid containment and/or water-based completion/fracture/workover fluid containment located over a alluvial deposit or in a near surface static water level environment.** Any pit used to contain water-based drilling fluids, cuttings and/or completion/ fracture/ workover fluids located in alluvial deposit area or an area where the static water table is within 10 feet of the surface shall utilize a geomembrane liner for all drilling fluids and cuttings and/or completion/ fracture/ workover fluids.

(II) **Water-based drilling fluid containment and/or water-based completion/fracture/workover fluid containment located within a wellhead protection area.** Any pit used to contain water-based drilling fluids, cuttings and/or completion/fracture/workover fluids located within a wellhead protection area (WPA) as identified by the Wellhead Protection Program (42 U.S.C. Section 300h-7, Safe Drinking Water Act), or within one mile of an active municipal water well for which the WPA has not been delineated, shall be required to have a geomembrane liner.

(ii) **Category 1B - Soil liner or geomembrane liner.**

(I) **Water-based drilling fluid containment and/or water-based completion/fracture/workover fluid containment located over a terrace deposit.** Any pit used to contain water-based drilling fluids, cuttings and/or completion/ fracture/ workover fluids located over a terrace deposit shall be required to have either a soil liner or a geomembrane liner.

(II) **Water-based drilling fluid containment and/or water-based completion/fracture/workover fluid containment located over a bedrock aquifer or Hydrologically Sensitive Area(HSA).** Any pit used to contain water-based drilling fluids, cuttings and/or completion/ fracture/workover fluids located over any bedrock aquifer or HSA and is used to contain water-based drilling fluids and/or cuttings and/or completion/fracture/workover fluids with chlorides in excess 5,000 mg/l shall be required to have a soil liner or a geomembrane liner. A separate unlined pit may be used to contain fluids and/or cuttings with a chloride content of less than of 5,000 mg/l.

(iii) **Category 2 - Water-based/other situations.** Any pit which is used to contain water-based drilling fluids, cuttings and/or completion/fracture/workover fluids with a set of conditions different from Categories 1A and 1B shall not be required to be lined.

(iv) **Category 3 - Oil-based.** Any pit used to contain oil-based drilling fluids, cuttings and/or completion/fracture/workover fluids shall be required to have a geomembrane liner.

(v) **Category 4 - Air-based.** Any pit used to contain the cuttings from an air-based system shall not be required to be lined.

(2) **Other type pits.**

(A) Any basic sediment pit shall be required to have a geomembrane liner.

(B) Any emergency pit shall not be required to be lined.

(C) Any flare pit shall not be required to be lined.

(D) Any recycling/reuse pit, spill containment pit, or remediation pit shall conform to the same criteria for determining liner requirements for reserve/circulation and/or completion/fracture/workover pits, pursuant to (b)(1) of this Section.

(3) **Converted pits.** Any pit that is to be converted from one use to another, e.g., reserve pit to completion or fracture pit, shall have the more stringent liner requirements, pursuant to (c)(6) and (c)(7) of this Section.

(4) **Offsite pits.** Any offsite pit shall conform to the liner requirements in this Section and will require a permit. The operator of the proposed pit shall submit Form 1014 in duplicate to the appropriate District Office for review and approval. No offsite reserve pit may be permitted or constructed at a spacing closer than one pit per governmental quarter quarter section and a distance less than 600 feet from any other pit. Any offsite reserve pit may be reclassified or considered as a commercial pit, pursuant to 165:10-9-1, if it is constructed or used at a spacing closer than one reserve pit per governmental quarter quarter section. Closure of any offsite reserve pit shall not warrant the permitting of another offsite reserve pit within the same governmental quarter quarter section. For use of a pit without a permit, the pit operator may be fined up to $1,000.00.

(5) **Variances.** Any variance from the liner requirements of this Section may be granted by the Manager of the Technical Department after receipt of a written request and supporting documentation required by the Department.

(c) **Construction requirements.**

(1) **Field or area rules.** Any noncommercial pit which is to be constructed or used in an area covered by a field or area rule shall be subject to the more stringent requirements of either this Section or the field or area rule.

(2) **Stockpiling of topsoil.** Prior to constructing any noncommercial pit, except an emergency pit, all top soil within the top twelve inches shall be stripped and stockpiled for use as the final cover of fill at the time of closure. The top soil may be stockpiled in the berms, provided it is not mixed with other materials and can be readily distinguishable from other materials at the time of closure.

(3) **Exclusion of runoff water.** Any noncommercial pit shall be constructed and maintained so that runoff water from outside the location is not allowed to enter it.

(4) **Flood protection.** Any noncommercial pit which is constructed in any area subject to frequent flooding according to the Soil Conservation Service County Soil Survey shall have berms substantial enough to prevent overtopping or washing out.

(5) **Constructing on fill.** Any noncommercial pit which requires a liner and is constructed on fill shall be constructed so that the maximum level of the solid contents will be maintained at least three feet below the natural ground level.

(6) **Soil liners.**

(A) Soil materials used or to be used in a soil liner shall undergo permeability testing either before or after construction, unless exempt pursuant to (B) of this paragraph.

(i) Pre-construction permeability testing shall consist of laboratory permeability tests on at least two specimens of representative soil liner materials compacted in the laboratory to approximately 90 percent of the material's Standard Proctor Density (ASTM D-698).

(ii) Post-construction permeability testing shall consist of at least two laboratory permeability tests on undisturbed samples of the completed soil liner or one field permeability test on the completed soil liner. Particular emphasis shall be placed on selecting the location(s) for permeability tests or test samples where nonuniformity in soil texture or color can be observed.

(iii) Laboratory permeability test procedures must conform to one of the methods described for fine-grained soils in the Corps of Engineers Manual EM-1110-2-1906 Appendix VII. In no case shall the pressure differential across the specimen exceed five feet of water per inch of specimen length. Field permeability tests shall be conducted only by the double ring infiltrometer method as described in ASTM D-3385. Permeability tests may be discontinued prior to flow stabilization upon satisfactory evidence that the permeability rate is less than 1.0×10^{-6} cm/sec.

(iv) If permeability testing shows that addition of bentonite or other approved material is needed to assist the native soils in meeting the permeability standard, it shall be applied at a minimum rate specified by the testing or engineering firm. Any bentonite used for liner material shall not have been previously used in drilling muds.

(B) Permeability testing requirements for soil materials may be exempt if laboratory testing of a minimum of two representative samples of the soil materials found throughout the entire depth of the

proposed excavation indicates that the plasticity index is greater than 16 (ASTM D-4318) and that the amount passing the No. 200 U.S. standards sieve is greater than 60 percent (ASTM D-1140).

(C) Any soil liner shall be constructed by disturbing the soil to the depth of the bottom of the liner, applying fresh water as necessary to the soil materials to achieve a moisture content wet of optimum, then recompacting it with heavy construction equipment, such as a footed roller, until the required density is achieved, pursuant to (H) of this paragraph.

(D) Any soil liner shall cover the bottom and interior sides of the pit entirely.

(E) Any soil liner shall be installed on a slope no steeper than 3:1 (horizontal to vertical).

(F) Any soil liner shall have a minimum thickness of six inches (after compaction), and shall have a maximum coefficient of permeability of 1.0×10^{-6} cm/sec, unless it conforms to (G) of this paragraph.

(G) A soil liner may have a coefficient of permeability greater than 1.0×10^{-6} cm/sec if it is greater in thickness and constructed in accordance with the following:

(i) A minimum twelve inch compacted soil liner shall have a maximum coefficient of permeability of 2.0×10^{-6} cm/sec.

(ii) A minimum 18 inch compacted soil liner shall have a maximum coefficient of permeability of 3.0×10^{-6} cm/sec.

(iii) A compacted soil liner may not be constructed thicker than 18 inches for the purpose of meeting a coefficient of permeability greater than 3.0×10^{-6} cm/sec.

(iv) Any soil liner with a minimum twelve inch or 18 inch thickness shall be constructed in maximum lifts of six inches (after compaction). Each lift shall be scarified before placement of the next lift and shall conform to (H) of this paragraph.

(H) Any soil liner shall be field tested for compaction, unless a post-construction permeability test is performed, pursuant to (A)(ii) of this paragraph.

(i) A minimum of six compaction tests shall be performed on any soil liner; a minimum of four widely spaced tests in the bottom of the pit and two tests on different slopes of the pit are required, unless otherwise directed by a Field Operations representative. Particular emphasis shall be placed on selecting locations for compaction tests where nonuniformity in soil texture or color can be observed.

(ii) Compaction tests shall be conducted in accordance with ASTM methods D-2922 or D-1556.

(iii) The soil materials of any liner shall be compacted to at least 90 percent of the Standard Proctor Density (ASTM D-698).

(7) **Geomembrane liners.**

(A) Any geomembrane liner that is installed in a reserve/circulation pit, spill prevention pit, or remediation pit, completion/fracture/ workover pit, basic sediment pit, or recycling/reuse pit shall have a minimum thickness of 20-mil.

(B) Any geomembrane liner used in a noncommercial pit shall be chemically compatible with the type of substances to be contained and shall have ultraviolet light protection.

(C) Any geomembrane liner shall be placed over a specially prepared, smooth, compacted surface void of sharp changes in elevation, rocks, clods, organic debris, or other objects.

(D) Any geomembrane liner shall be continuous, although it may include seams, and shall cover the bottom and interior sides of the pit entirely. The edges shall be securely placed in a minimum twelve inch deep anchor trench around the perimeter of the pit.

(8) **Certification of liner.** The operator of any noncommercial pit that is constructed with a soil or geomembrane liner shall secure an affidavit signed by the installer, certifying that the liner meets minimum requirements and was installed in accordance with Commission rules. It shall be the operator's responsibility to maintain the affidavit and all supporting documentation pertaining to the liner (e.g., permeability and compaction test results, bentonite receipts, and geomembrane liner specifications from the manufacturer), and shall make them available at all times for review by any representative of the Conservation Division.

(d) **Operation and maintenance requirements.**

(1) **Freeboard.** The fluid level of any noncommercial pit shall be maintained at all times at least 24 inches below the lowest elevation on the top of the berm.

(2) **Reserve/circulation pits.** The operator of any reserve/circulation pit shall limit its contents to the fluids and cuttings from a single well.

(3) **Off-site reserve pits.** A waterproof sign shall be posted within 25 feet of any off-site reserve pit and shall bear the name of the operator, legal description to the quarter quarter quarter section, permit number, and emergency telephone number.

(4) **Recycling/reuse pits.**

(A) Any pit permitted for drilling mud recycling or reuse may contain the fluids and cuttings from multiple wells, provided that those wells are operated by the pit operator.

(B) A waterproof sign shall be posted within 25 feet of any recycling/reuse pit and shall bear the name of the operator, legal description to the quarter quarter quarter section, permit number, and emergency telephone number.

(5) **Prevention of pollution.**

(A) All noncommercial pits shall be constructed, used, operated, and maintained at all times so as to prevent pollution. In the event of a nonpermitted discharge from a noncommercial pit, sufficient measures

shall be taken by the operator to stop or control the loss of contents, and reporting procedures pursuant to 165:10-7-5(c) shall be followed. Any materials lost from a pit shall be cleaned up as directed by any Field Operations representative. For a willful non-permitted discharge from a noncommercial pit, the operator may be fined up to $2,000.00.

(B) The protection of migratory birds shall be the responsibility of the operator. Therefore, the Conservation Division recommends that to prevent the loss of birds, oil be removed or the surface area covered by the oil be protected from access to birds. [See Advisory Notice 165:10-7-3(c)].

(e) **Closure requirements.**

(1) **Designation of disposal method.** The operator of any reserve/circulation pit shall indicate the proposed method of disposal of drilling fluids and/or cuttings on Form 1000 as required by 165:10-3-1(f). Options shall be limited to the following, unless written approval is granted by a Field Operations representative:

(A) Evaporation/dewatering and backfilling.

(B) Chemical solidification of pit contents.

(C) Annular injection (requires permit).

(D) Land application (requires permit).

(E) Disposal in permitted commercial pit.

(F) Disposal at permitted commercial soil farming facility.

(G) Disposal at permitted recycling/reuse facility.

(2) **Trenching.**

(A) Before trenching, stirring or otherwise disturbing the bottom of any noncommercial pit, the pit shall be completely dewatered.

(B) Trenching, stirring, or other similar practice shall be prohibited for any lined pit.

(3) **Lined pits.**

(A) When closing any noncommercial pit with a soil or geomembrane liner, extreme care shall be taken to preserve the integrity of the liner.

(B) For any lined reserve/circulation pit, completion/fracture/workover pit, recycling/reuse pit, or basic sediment pit, all free liquids shall be removed or chemically solidified with nonhazardous material.

(C) For any lined oil-based reserve/circulation pit, all cuttings remaining in the pit shall be chemically solidified with nonhazardous material.

(D) Soil cover, pursuant to (5) of this subsection, shall follow.

(4) **Soil cover.** Closure procedures for any noncommercial pit shall include a minimum of three feet of soil cover over any remaining pit contents, with all stockpiled topsoil being applied last. The materials shall be mounded or sloped to encourage runoff. A variance from this provision may be granted by a Field Operations District Office for justifiable cause. A written request and supporting documentation is required. The Field Operations office shall respond in writing within five working days either approving or disapproving the request.

(5) **Erosion control.** Any noncommercial pit shall be closed in such a manner that any future erosion will not cause the discharge of the pit contents. This may require vegetative cover and/or a diversion terrace(s).

(6) **Notification to District Office.** The operator of any noncommercial pit shall notify the appropriate Field Inspector or District Office at least 48 hours prior to commencing closure, and for reserve/circulation pits shall advise if the disposal method is different from that indicated on Form 1000. The operator shall also notify the Field Inspector or District Office within 48 hours after reclamation of the site has been completed.

(7) **Time limits.** Any noncommercial pit shall be closed within the time limits set forth in this paragraph. Any extension of time for pit closure must be requested by the operator, who shall file an application pursuant to OAC 165:5-7-33. A legal change of operator of any noncommercial pit shall not extend the time limit for closure. If a noncommercial pit is converted from one type of use to another, the last use shall determine the time limit for closure.

(A) Any Category 1A, 1B or 2 reserve/circulation pit, either on-site or off-site, shall be closed within twelve months after drilling operations cease.

(B) Any Category 3 reserve/circulation pit, either on-site or off-site shall be closed within six months after drilling operations cease.

(C) Any Category 4 pit shall have closure procedures commenced within 30 days and completed within 90 days after drilling operations cease.

(D) **Completion/fracture/workover pits.**

(i) Any reserve/circulation pit converted to a completion/fracture/ workover pit shall be closed within six (6) months after drilling operations cease. Upon request by the operator, a six (6) month extension shall be granted by the Conservation Division, after review by a field inspector to confirm the pit is in compliance with 165:10-7-16 (c) and (d)requirements.

(ii) Any completion/fracture/workover pit not converted from a reserve/circulation pit shall be closed within 60 days after completion, fracture, or workover operations cease.

(E) Any emergency pit shall be emptied of its contents as soon as possible and closed within 60 days after the emergency situation ceases to exist.

(F) Any flare pit shall be closed within 30 days of abandonment of a lease.

(G) Any spill containment pit shall be closed within 30 days of abandonment of a lease.

(H) Any basic sediment pit shall be closed within 60 days after use of the pit ceases.

(I) Any recycling/reuse pit shall be closed within twelve months after operations cease.

(J) Any remediation pit shall be closed immediately after receipt of all contaminated materials.

(8) For failure to comply with any closure requirement, the operator may be fined up to $1,000.00.

(9) **Waiver of closure requirements.** Exemption from closure and transfer of responsibility for any non-commercial pit to the surface owner or other party shall be requested by filing an application pursuant to OAC 165:5-7-34. No approval shall be granted unless the analyses of the fluids show that the following ranges or concentrations are not exceeded:

(A) pH - 6.0-9.5 s.u.

(B) Chlorides - 3500 mg/l

(C) Total Dissolved Solids (TDS) or Total Soluble Salts (TSS)- 7000 mg/l

(D) Chromium (Total) - 10 mg/l

(E) Arsenic - 20 mg/l

SUBCHAPTER 7. POLLUTION ABATEMENT

PART 3. STORAGE AND DISPOSAL OF FLUIDS

165:10-7-17. Surface discharge of fluids

(a) **Scope.** This Section shall cover the surface discharge of hydrostatic test water, storm water from diked areas, and produced water from tanks or other containment vessels.

(b) **Discharge of hydrostatic test water.**

(1) Hydrostatic test water used in the testing of new pipeline segments, new casing, new tubing, new tanks and new vessels, may be discharged as necessary without a permit, notification to the Commission, or adherence to any other provisions of this Section, provided the following conditions are met:

(A) **Low chlorides.** Chloride concentration does not exceed 1000 mg/l.

(B) **Sheen.** There shall be no visible sheen or discoloration as a result of testing; however, certain dyes used to establish mechanical integrity may be approved.

(C) **Notice to District Office.** Any discharges exceeding 1,000 barrels shall require notification to the appropriate District Office.

(2) Hydrostatic test water used in the testing of existing tanks, vessel lines and transmission pipelines may be discharged upon notification to the Oklahoma Corporation Commission appropriate District Office on Form 1014HD provided that the following conditions are met:

(A) **Oil and grease.** The oil and grease content of the discharge water shall not exceed 15 mg/l.

(B) **Sheen.** There shall be no visible sheen or discoloration as a result of testing; however, certain dyes used to establish mechanical integrity may be approved.

(C) **Total Suspended Solids ~~(TSS)~~.** The ~~TSS~~ Total Suspended Solids shall not exceed 45 mg/l.

(D) **pH.** The pH shall not be less than 6.5 nor exceed 9 s.u.

(E) **Foreign material.** The discharge must be free from foreign material such as welding scrap tank sediments or sand blasting waste material.

(F) **Soil erosion.** Standard soil erosion prevention procedures shall be required.

(3) Hydrostatic test water that meets the requirements listed in (b) (2) of this Section may be discharged in volumes less than 15 bbls without filing Form 1014HD.

(4) Hydrostatic test water that will be discharged to land and not directly into waters of the state and which may exceed the discharge parameters specified in (b) (2), shall be discharged only upon submission and approval by the Pollution Abatement Department of a plan for one-time discharge.

(5) Hydrostatic test water not covered under (b)(1) from transmission lines and tanks that contain waste products that are listed as hazardous waste under the Resource Conservation and Recovery Act and have not been cleaned or pigged must meet the following discharge requirements in addition to (b)(2) of this Section:

(A) The following parameters may not be exceeded: Benzene, .028 MG/L; toluene, .3 MG/L; phenol, .250 MG/L.

(B) EPA analytical method 8020 shall be used unless approved by the Manager of Pollution Abatement.

(c) **Discharge of storm water.** Storm water accumulations in any diked area built for the containment of tank battery spills may be discharged as necessary without a permit, notification to the Commission, or adherence to any other provisions of this Section, provided the following conditions are met:

(1) **No hydrocarbons.** A visual inspection of the storm water is made and there is no sheen or other visible evidence of hydrocarbons being present.

(2) **Low chlorides.** Chloride concentration does not exceed 1000 mg/l.

(3) **Conditions recorded.** The operator records the conditions required by (1) and (2) in this subsection for each discharge, maintains those records for a period of three (3) years, and makes them available upon request to any representative of the Field Operations Department.

(d) **Discharge of produced water.**

(1) **Site restrictions.** Discharge of produced water shall only occur on land having an Exchangeable Sodium Percentage (ESP) no greater than 15, pursuant to (f)(3) of this Section, and all of the following characteristics as determined by the appropriate Soil Conservation District or by a qualified soils expert:

(A) A maximum slope of five percent.

(B) Depth to bedrock at least 20 inches.

(C) Slight salinity (defined as electrical conductivity less than 4,000 micromhos/cm) in the topsoil or upper six inches of the soil.

(D) A water table deeper than six feet from the soil surface, except a perched water table.

(E) A minimum distance of 100 feet from any stream designated by Oklahoma Water Quality Standards (available for viewing at the Commission's Oklahoma City Office and District Offices) or any fresh water pond, lake, or wetland (designated by the National Wetlands Inventory Map Series, prepared by

the U.S. Fish and Wildlife Service and available for viewing at the Commission's Oklahoma City Office).

(2) **Water quality limitations.** A surface discharge permit shall not be issued if the produced water to be discharged exceeds either of the following concentrations:

(A) Total Dissolved Solids (TDS) or Total Soluble Salts (TSS) - 5000 mg/l.

(B) Oil and Grease - 1000 mg/l.

(e) **Sampling requirements.**

(1) **Contact with District Office.** The appropriate District Office shall be contacted at least two working days prior to sampling to allow a Commission representative an opportunity to witness the sampling of the receiving soil and produced water to be discharged. A variance from this provision may be granted by a Field Operations office for justifiable cause. A written request and supporting documentation shall be required. The Field Operations office shall respond in writing within five working days after receipt, either approving or disapproving the request.

(2) **Produced water.** Produced water to be discharged shall be sampled using the following procedure, unless exempt pursuant to (f)(4) of this Section.

(A) Prior to sampling, fresh water shall not be added to any tank or other containment vessel for dilution or any other purpose.

(B) A sample of the produced water to be discharged shall be taken from the bottom of the tank or other containment vessel. A minimum two quart sample shall be placed into a foil or teflon covered, glass container. The container shall be filled completely to exclude air and delivered to the laboratory within seven days. No samples shall be altered in any way.

(C) Another sample of the produced water to be discharged (approximately one pint) shall be properly labeled and delivered or otherwise provided to a Field Operations office or Field Inspector, unless exempt by the District Manager.

(3) **Receiving soil.** Soil samples shall be taken from the proposed discharge area and analyzed, unless exempt pursuant to (f)(4) of this Section. A minimum of 20 representative surface core samples (0-6 inches) must be taken from each sample area, combined and thoroughly mixed, then a minimum one pint composite sample taken and placed in a clean container for delivery to the lab. No sample area shall exceed 40 acres.

(f) **Analysis requirements.**

(1) **Certified laboratory.** The samples of soil and produced water shall be analyzed by a laboratory operated by the State of Oklahoma or certified by the ~~Oklahoma Water Resources Board~~ Department of Environmental Quality or in the North American Proficiency Testing System, unless exempt pursuant to (4) of this subsection.

(2) **Parameters for produced water.** Parameters for analysis of the produced water shall include, but not be limited to, Total Dissolved Solids (TDS) or Total Soluble Salts (TSS) and Oil and Grease.

(3) **Parameters for soil.** Parameters for analysis of the receiving soil shall include, but not be limited to, Electrical Conductivity or Total Soluble Salts (TSS) and Exchangeable Sodium Percentage (ESP).

(4) **Exemptions.** A Field Operations office may exempt the analysis of produced water if an analysis of the produced water from a well located within one mile and producing from the same formation has been previously submitted. Analysis of the receiving soil may be exempt if an analysis of the same soil type(s) within one mile of the proposed discharge site has been previously submitted.

(g) **Application for permit.**

(1) **Permit required.** No person shall discharge produced water from a tank or other containment vessel without applying for and obtaining a permit issued under this subsection. An operator discharging produced water without a permit shall be fined $1,000.00.

(2) **Who may apply.** Only the operator of the well associated with the tank or other containment vessel, the contents of which are sought to be discharged, may apply for a surface discharge permit.

(3) **Required form and attachments.** Each application for surface discharge of produced water shall be submitted to a Field Operations office on Form 1014D in quadruplicate. The forms shall be properly completed and signed. Attached to at least one of the forms shall be the following:

(A) A copy of written notice to the surface owner that the applicant intends to discharge produced water as per 165:10-7-17 to a specific portion of real property as designated by legal description.

(B) If the operator has an agent, a contractual agreement between the parties or an affidavit designating the contractor or agent.

(C) A well prepared map or diagram, drawn to scale, showing the proposed and potential discharge areas.

(D) Site suitability report, pursuant to (d)(1) of this Section, provided by a qualified soils expert (include qualifications).

(E) Analysis of produced water, unless exempt pursuant to (f)(4) of this Section.

(F) Soil analysis, unless exempt pursuant to (f)(4) of this Section.

(G) Other information as required by this Section or requested by a Field Operations office.

(4) **Review period.** The Field Operations office shall review the application, either approve or disapprove it, and return a copy of Form 1014D within five working days of submission of all required or requested information. If approved, a permit number shall be assigned to Form 1014D; if disapproved, the reason(s) shall be given. The applicant may make application for a hearing if it is not approved.

(h) **Maximum application rate.**

(1) **Soil loading standards.** The maximum application rate shall be calculated by the Field Operations office using the following soil loading standards. (Soil loading standards are based upon standards set forth in "Diagnosis

and Improvement of Saline and Alkaline Soils," U.S. Agriculture Handbook 60. Pub. U.S. Salinity Laboratory, Riverdale, California, 1954. "Critical Concentrations for Irrigation Water Supplies," Water Quality Criteria, 1972 Ecological Research Series, EPA R2-73033, March, 1973).

(A) Total Soluble Salts - 6,000 lbs/acre (less TSS in soil).

(B) Oil and Grease - 500 lbs/acre.

(2) **Determination of most limiting parameter.** The maximum application rate shall be restricted by the most limiting parameter. It may require more than one application to achieve the maximum application rate while avoiding runoff. The Field Operations office shall indicate on the permit what the maximum application rate shall be after making the following calculations:

PROCEDURE FOR CALCULATING APPLICATION RATE OF TOTAL SOLUBLE SALTS (TSS)

_____ppm TSS in soil[1] × 2 = _____lbs/ac TSS in soil

6000 lbs/ac TSS – _____lbs/ac TSS in soil = Maximum TSS (lbs/ac) to applied

Maximum TSS (lbs/ac_____÷(_____ppm TSS in water[1]×.000001) = Maximum lbs/ac of water to be applied_____

Maximum lbs/ac_____÷_____lbs/bbl[2] = Maximum bbls/ac_____

PROCEDURE FOR CALCULATING APPLICATION RATE OF OIL AND GREASE

500 lbs/ac÷(_____ppm in water×.000001) = Maximum lbs/ac of water to be applied_____

Maximum lbs/ac_____÷_____lbs/bbl[2] = Maximum bbls/ac_____.

[1] Electrical Conductivity (EC expressed in micromhos/cm) may be used to estimate TSS: EC × 0.64 – ppm TSS.
[2] Based on documented weight of composite sample.

(i) **Conditions of permit.** Any discharge of produced water that is done under this Section shall be subject to the following conditions or stipulations of the permit.

(1) **Presence of representative.** A representative of the operator shall be on the discharge site at all times that water is being applied. A variance from this provision may be granted by a Field Operations office for justifiable cause. A written request and supporting documentation shall be required. The Field Operations office shall respond in writing within five working days after receipt, either approving or disapproving the request.

(2) **Weather restrictions.** Surface discharge shall not be done:

(A) During precipitation events or when precipitation is imminent.

(B) When the soil moisture content is at a level such that the soil would not readily take the addition of water.

(C) When the ground is frozen.

(D) By spray irrigation when the wind velocity is such that even distribution of water cannot be accomplished or the buffer zones, pursuant to (3) of this subsection, cannot be maintained.

(3) **Buffer zones.** Surface discharge shall not be done within the following buffer zones:

(A) Fifty feet of a property line boundary.

(B) Fifty feet of any stream not designated by Oklahoma Water Quality Standards.

(C) Three hundred feet of any actively-producing water well used for domestic or irrigation purposes.

(D) Eight hundred feet of any actively-producing water well used for municipal purposes.

(4) **Application rate.** The maximum application rate of produced water stipulated by the permit shall not be exceeded. Application of produced water outside the approved plot shall be prohibited. Accurate records shall be kept as to the quantities discharged and the dates of each discharge.

(5) **Discharge method.** Discharge of produced water shall be uniform over the approved discharge plot and shall be made by spray irrigation or other method approved by the Commission prior to use. The flood irrigation method shall be limited to those fields that normally are irrigated in that manner.

(6) **Runoff or ponding prohibited.** No runoff or ponding of discharged water shall be allowed during application.

(7) **Annual report.** An annual report shall be submitted by ~~February 1~~ April 1 of each year and shall be made on Form 1014P. Attached to the annual report shall

be current (within three months) analyses of the produced water and soil from the discharge plot, pursuant to (8) of this subsection.

(8) **Additional testing.** The produced water ~~and soil shall be sampled and~~ shall be analyzed annually and the receiving soils shall be sampled and analyzed a minimum of every five (5) years, pursuant to (e)(1) through (e)(3) and (f)(1) through (f)(3) of this Section~~, on an annual basis just prior to filing of the annual report~~. When ~~a soil analysis indicates that~~ 75 percent of the maximum permitted application volume ~~rate~~ of TSS or Oil and Grease [(h) of this Section] has been applied or when the ESP exceeds 11, water and soil sampling shall be done quarterly or semiannually as determined by the Field Operations office.

(9) **Expiration of permit.** The permit shall expire by its own terms when testing, pursuant to (8) of this subsection, indicates that the concentration of ~~TDS~~ TSS or Oil and Grease in the water exceeds the limitations of (d)(2) of this Section, or more than 98 percent of the maximum application rate of TSS or Oil and Grease [(h) of this Section] has been applied or the ESP exceeds 15.

(10) **Violations.** If the applicant violates the conditions of the permit or this Section, the surface discharge shall be discontinued and the Field Operations office shall be contacted immediately. The Field Operations office may revoke the permit and/or require the operator to do remedial work. If the permit is not revoked, surface discharge may resume with Field Operations' approval. If the permit is revoked, the operator may make application for a hearing to reinstate it.

165:10-7-19. One-time land application of water-based fluids from earthen pits and tanks

(a) **Authority for land application.** No person shall land apply fluids except as provided by 165:10-9-2, 165:10-7-17, or this Section. Any operator failing to obtain a permit shall be fined $2,000.

(b) **Scope.** This Section shall cover the land application of water-based drilling fluids and cuttings from earthen pits, tanks, or other containment structures; however, this Section shall not be exclusive of other authorities for land application listed in (a) of this Section. Any land application made under this Section shall be done ~~on a one-time basis~~ from a single well to land that has not been previously permitted and used for this practice or similar practices for at least three (3) years.

(c) **Site suitability restrictions.** Land application shall only occur on land having all of the following characteristics below, as field verified by a soil scientist or other qualified person pre-approved by the Commission. Any variance from site suitability restrictions must be approved by the Oil and Gas Conservation Division (see (f)(2)(C) of this Section).

(1) **Maximum slope.**

(A) Five percent for all application methods except spray irrigation;

(B) Eight percent for the spray irrigation method.

(2) **Depth to bedrock.** Depth to bedrock must be at least 20 inches.

(3) **Soil texture.** A soil profile (as defined by USDA soil surveys) containing at least twelve inches (may be cumulative) of one of the following soil textures between the surface and the water table, unless a documented impeding layer of shale is present: loam, silt loam, silt, sandy clay loam, silty clay loam, clay loam, sandy clay, silty clay, or clay.

(4) **Salinity.** Slight salinity [defined as Electrical Conductivity (EC) less than 4,000 micromhos/cm] in the topsoil, or upper six inches of the soil, and a calculated Exchangeable Sodium Percentage (ESP) less than 10.0.

(5) **Depth to water table.** No evidence of a seasonal water table within six (6) feet of the soil surface as verified by field observation and published data.

(6) **Distance from water bodies.** A minimum distance of 100 feet from the land application site boundary to any perennial stream and 50 feet to any intermittent stream shown on the appropriate United States Geological Survey (U.S.G.S.) topographic map (available for viewing at the Commission's Oklahoma City Office and District Offices) and a minimum of 100 feet to any freshwater pond, lake, or wetland. [Designated by the National Wetlands Inventory Map Series, prepared by the U.S. Fish and Wildlife Service, available for viewing at the Commission's Oklahoma City Office (also, see (h)(6) of this Section)].

(7) **Site specific concerns.** Void of slick spots within or adjacent to the land application area, where subsurface lateral movement of water is unlikely, or areas void of concentrated surface flow such as gullies or waterways.

(8) **Stockpiling of cuttings.** Stockpiling of cuttings may be used during the handling and transportation of the cuttings both at the well location and the receiving site. At the well site the cuttings must be placed in a steel pit or the areas used for this practice must be lined and bermed if required by the District Office. A stockpile of cuttings at the receiving site must be located on the permitted area. The stockpile of cuttings, whether at the well location or the receiving site, must be closed within 30 days of cessation of drilling operations.

(d) **Sampling requirements.**

(1) **Notice to Field Inspector.** The appropriate Field Inspector shall be contacted at least two working days prior to sampling of the receiving soil and sampling of the drilling fluids and/or cuttings to be land applied from an earthen pit. This is to allow a Commission representative an opportunity to be present.

(2) **Receiving soil.** Sampling of the receiving soil shall be performed by, or under the supervision of, a soil scientist or other qualified person pre-approved by the Commission. Soil samples shall be taken from the proposed application area and analyzed. A minimum of four representative core samples from the surface (0-6 inches) and subsurface (14-20 inches) must be taken from each ten acres, or part thereof. Each group of surface core samples representative of a ten-acre area (or less) shall be combined and thoroughly mixed. A minimum one-pint composite sample shall be taken and placed in a clean container for delivery to the laboratory. Alternatively,

soil samples may be composited by the laboratory. All subsurface samples shall be handled in the same manner.

(3) **Drilling fluids and/or cuttings.**

(A) **Earthen pits.** Drilling fluids and/or cuttings to be land applied shall be sampled using the following procedure:

(i) Prior to sampling, fresh water (except natural precipitation) shall not be added to any pit for dilution or any other purpose.

(ii) A minimum of four samples, each from different quadrants of the pit and representative of the materials to be land applied, must be taken if the volume to be land applied is 25,000 bbls. or less. If more than 25,000 bbls. are to be land applied, a minimum of four quadrant samples plus one sample for each 5,000 bbls. over 25,000 bbls. will be required. The samples shall be combined and thoroughly mixed, then a minimum two quart composite sample placed into a foil or teflon covered glass container. The container shall be filled completely to exclude air and delivered to the laboratory within seven days. No samples shall be altered in any way.

(iii) After samples have been taken for analysis from a pit, the operator shall not allow the addition of fluids or other materials, except natural precipitation or fresh water to decrease the viscosity of the fluid.

(B) **Tanks.** Sampling of the drilling fluids and/or cuttings shall occur after the application has been approved. A minimum of one representative sample must be taken from each tank or other containment structure, the contents of which are to be land applied.

(e) **Analysis requirements.**

(1) **Testing.**

(A) The composite sample(s) of soil shall be tested by a laboratory ~~proficient in testing soils~~ operated by the State of Oklahoma or certified by the Oklahoma Department of Environmental Quality or in the North American Proficiency Testing System. Either a 1:1 extract or saturated paste extract shall be used for sample preparation.

(B) Methods of analysis.

(i) **Earthen pits.** The composite sample(s) of drilling fluids and/or cuttings shall be analyzed by a laboratory operated by the State of Oklahoma or certified by the Oklahoma Department of Environmental Quality or in the North American Proficiency Testing System.

(ii) **Tanks.** Samples of the drilling fluids and/or cuttings may be tested on-site. A filter press shall be used for preparation of samples. Tests must be performed by a person who is knowledgeable and experienced in the chemical testing of fluids. Acceptable on-site testing protocol may be obtained from a Field Operations office.

(2) **Parameters for receiving soil.** Parameters for analysis of the receiving soil shall include at a minimum EC and ESP.

(3) **Parameters for drilling fluids and/or cuttings.**

(A) **Earthen pits.** Parameters for analysis of the drilling fluids and/or cuttings shall include at a minimum EC and Oil and Grease (O&G). Dry Weight shall also be determined if a significant amount of solids will be land applied.

(B) **Tanks.** EC shall be a required parameter for analysis of drilling fluids and/or cuttings. Dry weight shall also be determined if a significant amount of solids will be land applied.

(f) **Application for permit.**

(1) **Who may apply.** Only the operator of a well or the operator's designated_agent may apply for a land application permit under this Section, except that a commercial pit operator may also apply in case of emergency or for the purpose of facilitating repair or closure.

(2) **Required form and attachments.** Each application for land application of drilling fluids and/or cuttings shall be submitted to a Field Operations office on Form 1014S. An original and three copies shall be required. Attached to at least one of the copies shall be the following:

(A) Written permission from the surface owner to allow the applicant to land apply drilling fluids and/or cuttings. For purposes of obtaining such consent, the applicant shall use Form 1014L.

(B) A topographic map and the most recent aerial photograph (minimum scale 1:660) with the proposed and potential land application areas delineated as well as the location of cultural features such as buildings, water wells, etc. Both the topographic map and aerial photograph must show all areas within 1,320 feet of the boundary of the land application area.

(C) A site suitability report, pursuant to subsections (c) and (h)(6) of this Section, based on an on-site investigation and signed by a soil scientist or other qualified person. The report shall include detailed information concerning the site and shall discuss how all site characteristics were determined. Any requests for a variance to site suitability restrictions must be accompanied by a written justification that has been developed or approved by a soil scientist or other qualified person. The justification shall provide explanation as to safeguards which will assure that conditions of the permit will be met and there will be no adverse impacts from the land application.

(D) Analysis of drilling fluids and/or cuttings (for earthen pits only).

(E) Analyses of soil samples.

(F) Loading calculations.

(G) Copies of all chains-of-custody related to sampling.

(H) Manufacturer, model number, and specifications of testing equipment to be used (for tanks only).

(I) If there is an agent, a notarized affidavit designating same, signed by the operator.

(J) Other information as required by this Section or requested by a Field Operations office.

(3) **Review period.** The Field Operations office shall review the application, either approve or disapprove it, and return a copy of Form 1014S within five working days of submission of all required or requested information. If approved, a permit number shall be assigned to Form 1014S; if disapproved, the reason(s) shall be given. The applicant may make application for a hearing if it is not approved.

(g) **Calculating maximum application rate.**

(1) **Earthen pits.**

(A) The maximum application rate shall be calculated by the applicant or the applicant's designated agent based on the analyses of the pit materials and the soil of the application area. The averaging of TDS or TSS values of soil sampling areas shall not be permitted. If the entire application area is larger than ten acres, requiring separate soil sampling areas, the applicant or the applicant's designated agent shall use the highest soil TDS or TSS value of any sampling area in calculating the maximum application rate for the entire application area, and shall also calculate the maximum application rate of each ten acre (or less) application area using the respective TDS or TSS values of each soil sampling area. The applicant or the applicant's designated agent shall decide which of the two loading rates to use and notify the District Office when notification of commencement of land application is given, pursuant to (h)(1) of this Section.

(B) Soil loading formulas contained in Appendix I shall be used.

(C) The maximum application rate shall be restricted by the most limiting parameter. The Field Operations office shall indicate on the permit the maximum application rate and the minimum acreage that must be used.

(2) **Tanks.**

(A) The applicant shall calculate the maximum application rate based on the analysis of each tank or other containment vessel to be land applied and the soil of the application area. The averaging of TDS or TSS values of soil sampling areas shall not be permitted. If the entire application area is larger than ten acres, requiring separate soil sampling areas, the applicant shall have the option of using the highest soil TDS or TSS value of any sampling area in calculating the maximum application rate for the entire application area, or calculating the maximum application rate of each ten-acre (or less) application area using the respective TDS or TSS value of each soil sampling area.

(B) Soil loading formulas contained in Appendix I shall be used.

(C) Based on the maximum application rate, the applicant or its designated agent shall determine where the fluids will be applied and supervise the land application process.

(h) **Conditions of permit.** Any land application which is performed under this Section shall be subject to the following conditions or stipulations of the permit:

(1) **Notice to Field Inspector.** The applicant shall notify the appropriate Field Inspector at least 24 hours prior to the commencement of land application to allow a Commission representative an opportunity to be present.

(2) **Compliance agreement.** Any person responsible for supervision of land application shall have signed a compliance agreement with the Commission.

(3) **Presence of representative.** A representative of the applicant shall be on the land application site at all times during which fluids and/or cuttings are being applied. The representative shall be an employee of the applicant, designated agent, contractor, or other person pre-approved by the Commission.

(4) **Materials to be land applied.** Land application shall be limited to water-based drilling fluids and/or cuttings.

(5) **Weather restrictions.** Land application, including incorporation, shall not be done:

(A) During precipitation events or when precipitation is imminent.

(B) When the soil moisture content is at a level such that the soil cannot readily take the addition of drilling fluids.

(C) When the ground is frozen.

(D) By spray irrigation when the wind velocity is such that even distribution of materials cannot be accomplished or the buffer zones, pursuant to (6) of this subsection, cannot be maintained.

(6) **Buffer zones.** Land application shall not be done within the following buffer zones, as identified in the site suitability report:

(A) Fifty feet of a property line boundary.

(B) Three hundred feet of any actively producing water well used for domestic or irrigation purposes.

(C) One-quarter (1/4) mile of any actively producing water well used for municipal purposes.

(7) **Land application rate.** The maximum calculated application rate of drilling fluids and/or cuttings shall not be exceeded. It may require more than one pass to achieve the maximum application rate while avoiding runoff or ponding, pursuant to (9) of this subsection. Application of drilling fluids and/or cuttings outside the approved plot shall be prohibited.

(8) **Land application method.**

(A) Application of drilling fluids and/or cuttings shall be uniform over the approved land application plot, shall not be applied at a rate to cause permanent vegetation damage, and shall be made by a method approved by the Commission prior to use. The flood irrigation method shall be limited to those fields that normally are irrigated in that manner.

(B) For earthen pits, if more than 500 lbs/acre of Oil and Grease or 50,000 lbs/acre of Dry Weight materials are applied, the materials shall be incorporated into the soil by use of the injection method,

or by disking or use of some other method approved by the Commission prior to use within 15 days after application.

(9) **Runoff or ponding prohibited.** No runoff of land applied materials shall be allowed during application. Ponding is prohibited, except where the flood irrigation method is approved. In order to comply with this rule, some applications will require the use of more than the minimum calculated acreage and/or a drying period between applications.

(10) **Vegetative cover.** If the vegetative cover is destroyed or significantly damaged by disking, injection, or other practice associated with land application, a bona fide effort shall be made to restore or reestablish the vegetative cover within 180 days after the land application is completed. Additional efforts shall be made until the vegetative cover is fully restored or reestablished.

(11) **Time period.**

(A) **Earthen pits.** Land application shall be completed within 90 days from the date of the permit. At the end of the 90 day period, the permit shall expire by its own terms. To renew the permit, the applicant shall resample the fluids and/or cuttings to be land applied, submit a new analysis, and receive a notification of renewal from a Field Operations office.

(B) **Tanks.** Land application shall be completed within ~~180~~ 90 days after drilling ceases.

(12) **Post-application report.** A post-application report shall be submitted by the operator or the operator's agent to the Manager of Field Operations within ~~30~~ 90 days of the completion of land application. The report shall give specific details of the land application, including test results of materials applied and loading rate calculations (for tanks only), volumes of materials applied, and an aerial photograph (minimum scale 1:660) delineating the actual area where materials were applied. The report shall contain a statement certifying that the land application was done in accordance with the approved permit.

(13) **Violations.** If the applicant violates the conditions of the permit or this Section, the land application shall be discontinued and the Field Operations office shall be contacted immediately. The Field Operations office may revoke the permit and/or require the operator to do remedial work. If the permit is not revoked, land application may resume with Field Operations' approval. If the permit is revoked,' the operator may make application for a hearing to reinstate it.

(14) **Requirements to close pit.** Neither filing an application nor receiving a permit under this Section shall extend the time limit for closing a reserve pit pursuant to 165:10-7-16, or a commercial pit pursuant to 165:10-9-1.

(i) **Variances.** A variance from the time provisions of (d)(1), (h)(1), (h)(8)(B) or (h)(10) of this Section may be granted by a Field Operations office for justifiable cause. A written request and supporting documentation shall be required. The Field Operations office shall respond in writing within five working days after receipt, either approving or disapproving the request.

165:10-7-20. Noncommercial disposal or enhanced recovery well pits used for temporary storage of saltwater

(a) **Scope.** This Section shall apply to any production operation where a pit is used for temporary storage of saltwater, except (c)(7) of this Section, which shall apply to any noncommercial well, regardless of whether or not a pit is used.

(b) **Construction requirements.**

(1) **Splash pad/apron.** A splash pad/apron shall be constructed at the unloading area of any noncommercial disposal well or enhanced recovery pit to the design and dimensions necessary to contain and direct all materials unloaded into the pit, unless the pit is of such design that discharge directly into it presents no spill potential.

(2) **Pit specifications.** Except as provided by (4)(A) of this subsection, any noncommercial disposal or enhanced recovery well pit shall be constructed of concrete or steel or be lined with a geomembrane liner according to the following:

(A) Concrete pits must be steel reinforced and have a minimum wall thickness of six inches.

(B) Steel pits must have a minimum wall thickness of three-sixteenths (3/16) inch. A previously used steel pit may be installed, provided it is free of corrosion or other damage.

(C) Geomembrane liners must:

(i) Have a minimum thickness of 30 mils, be chemically compatible with the type of wastes to be contained, and have ultraviolet light protection.

(ii) Be placed over a specially prepared, smooth, compacted surface void of sharp changes in elevation, rocks, clods, organic debris, or other objects.

(iii) Be continuous (may include seams) and cover the bottom and interior sides of the pit entirely. The edges must be securely placed in a minimum twelve inch deep anchor trench around the perimeter of the pit.

(3) **Certification of liner.** The operator of any saltwater storage pit that is constructed with a geomembrane liner shall secure an affidavit signed by the installer, certifying that the liner meets minimum requirements and was installed in accordance with Commission rules. It shall be the operator's responsibility to maintain the affidavit and all supporting documentation pertaining to the liner, such as geomembrane liner specifications from the manufacturer, etc., and shall make them available to a representative of the Conservation Division upon request.

(4) **Monitoring of site.**

(A) If not constructed according to one of the three methods in (2) of this subsection, any noncommercial disposal or enhanced recovery well pit shall be required to have a leachate detection system or at least one monitor well, unless it can be shown that the pit is not located over a hydrologically sensitive area, i.e., a principal bedrock aquifer, the recharge or potential recharge area of a principal bedrock aquifer, or an unconsolidated alluvium or terrace deposit, according

to the Oklahoma Geological Survey "Maps Showing Principal Groundwater Resources and Recharge Areas in Oklahoma" (available for viewing at the Commission's Oklahoma City Office or District Offices). The District Manager may require more than one monitor well if he has reason to believe one would not be sufficient to adequately monitor the site.

(B) Any monitor well shall be installed within 100 feet of the pit. An existing nearby water well may be used as a monitor well upon written approval by the District Manager or Manager of Field Operations.

(C) Any new monitor well shall be drilled through the first aquifer encountered, but need not extend below 100 feet if no aquifer is encountered, and shall be completed by a licensed monitor well driller. If documentation can be submitted prior to drilling to show that no water will be encountered within 100 feet, the District Manager may allow the monitor well(s) to be drilled to a lesser depth or eliminated.

(D) Any new monitor well shall have:

(i) A minimum two inch diameter PVC casing with a sealing cap on the bottom.

(ii) Casing consisting of a slotted liner in the saturated zone, or bottom ten feet if none is encountered, and be gravel packed or sand packed as appropriate to the installation.

(iii) Bentonite placed in the annular space of the well above the slotted liner for an interval of at least two feet to form an adequate seal.

(iv) Well cuttings returned to the annular space above the bentonite seal for well stability.

(v) A minimum of two of the top six feet of annular space around the casing filled with cement.

(vi) A minimum three inch thick concrete apron placed at the surface to a minimum two foot radius from the casing.

(vii) A removable and lockable cap placed on top of the casing. The cap must remain locked at all times, except when a well is being sampled.

(E) Within 30 days of installation, construction details for any leachate detection system or specific completion information for any monitor well and a diagram of the location of any monitor well in relation to the pit shall be submitted to the Manager of Field Operations.

(c) **Operation and maintenance requirements.**

(1) **Fencing.** All noncommercial disposal or enhanced recovery well surface facilities that have a pit shall be completely enclosed by a minimum four strand barbed wire fence or equivalent protection as approved by the District_Manager. Said fence shall be constructed in such a manner as to prevent livestock from entering the pit area.

(2) **Site maintenance.** The normal access surface of any well site that has a pit, including the access road(s), shall be maintained in a condition that will safely and easily allow access.

(3) **Exclusion of runoff water.** No pit shall be allowed to receive runoff water.

(4) **Freeboard.** The fluid level in any concrete or steel noncommercial disposal or enhanced recovery well pit shall be maintained at all times at least six inches below the top of the pit wall. Any geomembrane lined pit shall have a minimum of 18 inches of freeboard at all times.

(5) **Temporary storage only.** No pit shall be used as permanent storage for salt water.

(6) **Sampling of monitor wells or leachate detection systems.**

(A) Sampling of monitor wells and leachate detection systems shall occur once every six months, during the months of January and July.

(B) The appropriate District Manager shall be notified at least 24 hours in advance of sampling to allow a Commission representative an opportunity to witness the sampling.

(C) Samples shall be collected, preserved, and handled by the operator according to EPA approved standards (RCRA Groundwater Monitoring Technical Enforcement Guidance Document, EPA, OSWER-9950.1, September, 1986, pp. 99-107) and analyzed for pH, chlorides (Cl) and total dissolved solids (TDS) by a laboratory certified or operated by the State of Oklahoma. Analysis of additional parameters may be required as determined by the District Manager or Manager of Field Operations. A copy of each analysis and a statement as to the depth to groundwater encountered in each well, or an affidavit that no water was encountered, shall be forwarded to the Manager of Field Operations, within 30 days of sampling.

(7) **Prevention of pollution.** All noncommercial disposal or enhanced recovery wells shall be maintained at all times so as to prevent pollution. In the event of a nonpermitted discharge from surface facilities, sufficient measures shall be taken immediately to stop, contain, and control the loss of materials. Reporting of said discharge shall be in compliance with 165:10-7-5(c). Any materials lost due to such discharge shall be cleaned up as directed by a representative of the Conservation Division of the Commission.

(8) **Oil film.** The operator of a saltwater pit shall be responsible for the protection of migratory birds. Therefore, the Conservation Division recommends that to prevent the loss of birds due to oil films, all open top tanks and pits containing fluid be kept free of oil films or sludge or be protected from access to birds. [See Advisory Notice 165:10-7-3(c)]

(d) **Closure requirements.**

(1) **Time limit.** Within 180 days of the cessation of operations, all associated pits shall be emptied of all contents, and either removed or filled with soil. All monitor wells shall be plugged with bentonite or cement, unless exempt in writing by the District Manager or Manager of Field Operations. The site shall be revegetated within one (1) year.

(2) **Burial.** If any concrete, steel, geomembrane, or other materials associated with the site are to be left

on-site, they shall be buried under a minimum soil cover of three feet, pursuant to 165:10-3-17.

(e) **Prospective application to existing facilities.** All provisions of this Section, except those in (b)(2) and (b)(3), shall apply to all existing pits within the scope of this Section which are, or have been, in operation prior to the effective date of this Section. Operators shall have one (1) year from the effective date of this Section in which to bring their facilities into compliance with the applicable provisions of this Section. Failure to comply with any applicable provision may result in revocation of the authority to operate.

(f) **Variances.**

(1) A variance from the time requirements of (c)(6), (d)(1), or (e) of this Section may be granted by the District Manager or Manager of Field Operations for justifiable cause. A written request and justifiable explanation is required. The District Manager or Manager of Field Operations shall respond in writing within five working days, either approving or disapproving the request.

(2) Any variance from the liner requirements as required under (b)(2) of this Section may be granted by the manager of Field Operations after receipt of a written request and supporting documentation required by the department.

165:10-7-22. Permits for County Commissioners to apply waste oil, waste oil residue, or crude oil contaminated soil to roads

(a) **Prohibition against application of waste oil, waste oil residue, or crude oil contaminated soil without permit.** This Section prohibits any Board of County Commissioners from applying waste oil, waste oil residue, or crude oil contaminated soil to a street or road without a permit.

(b) **Permit by District Office.** A District Manager for the Conservation Division may issue to a Board of County Commissioners for a county within the district a permit to apply waste oil, waste oil residue, or crude oil contaminated soil to a street or road within the county.

(c) **Permit requirements.**

(1) **Use of Form 1014W.** The application and permit to apply waste oil, waste oil residue, or crude oil contaminated soil shall be made on Form 1014W.

(2) **Telephone permits.** In case of emergency, a District Manager may issue a permit by telephone. If an applicant obtains a permit by telephone, then the applicant shall file Form 1014W and attachment within five working days after receipt of the permit by telephone.

(3) **Conditions for permit.**

(A) Waste oil, waste oil residue, and contaminated soils applied under this Section shall consist of crude oil and materials produced with crude oil only and shall not contain any refined oils such as motor oils, lubricants, compressor oils or hydraulic fluids.

(B) If required by the District Manager, a hydrocarbon analysis shall be submitted with Form 1014W. The analysis shall be performed by a ~~state certified~~ laboratory certified or operated by the state of Oklahoma in accordance with OCC-approved methods.

(C) Waste oil, waste oil residue, and crude oil contaminated soil shall be applied in such a manner that pollution of surface or subsurface waters will not likely occur and public and private property adjoining the street or road will be protected.

(D) During operations for road oiling, all necessary signs, lights, and other safety and warning devices shall be used to alert road users to conditions. A sign shall be posted with the contractor or authority's name and phone number to contact in case of emergency.

(E) Following completion of the project there shall be a uniform soil/oil base (all liquid worked in), with no visible free-standing oil.

(F) Proper care shall be taken to avoid runoff of oil or water into borrow ditches or adjacent areas.

(G) No road oiling shall be conducted:

(i) When the temperature is less than 45° F.

(ii) In any area where water collects and stands.

(iii) Where soil moisture content or road conditions such as soil type, tight soil conditions, packed soil conditions, or grade limits prevent rapid absorption of the oil.

(d) **Notice to District Office.** The Board of County Commissioners receiving the permit shall notify the District Office at least two days prior to commencement of road oiling under a permit.

(e) **Site inspection.** At his discretion, a District Manager may request a Field Inspector of the Conservation Division or an Enforcement Officer of the Transportation Division to inspect the site at any time during the road oiling operation to ensure compliance with this Section.

(f) **Duration of permit.** The permit shall state the duration of the permit, and it shall also state that if the application fails to comply with either the terms of the permit or the terms of this Section, then the permit shall terminate automatically.

(g) **Disapproval or cancellation of permits.**

(1) If a District Manager receives a complaint about a road oiling permit, he shall cause an investigation of the complaint to be made as soon as practicable. During the investigation, the District Manager may direct the applicant to cease road oiling under a permit. If necessary, the District Manager may verbally revoke the permit.

(2) If a District Manager disapproves an application or cancels a permit, the applicant may apply to the Commission for an order under OAC 165:5-7-41.

165:10-7-26. One-time land application of contaminated soils and petroleum hydrocarbon based drill cuttings

(a) **Authority for land application.** No person shall land apply soils or drill cuttings contaminated by salt or petroleum hydrocarbons except as provided by this Section. Any operator failing to obtain a permit shall be fined $2,000.00.

(b) **Scope.** This Section shall cover the land application of soils and drill cuttings contaminated by salt and/or petroleum hydrocarbons. Petroleum hydrocarbon-contaminated soils land applied under this Section shall meet the RCRA criteria for exempt or non-exempt/nonhazardous waste. [Reference

40 CFR Subtitle C and EPA publication EPA530-K-95-003 "Crude Oil and Natural Gas Exploration and Production Wastes: Exemption from RCRA Subtitle C Regulation]. Hazardous waste as defined at 40 CFR 261.3 is regulated by the Oklahoma Department of Environmental Quality. Any land application made under this Section shall be done on a one-time basis to land that has not been previously used for this practice or similar practices.

(c) **Receiving site suitability restrictions.** Land application shall only occur on land having all of the characteristics below, as field verified by a soil scientist or other qualified person pre-approved by the Commission~~:~~. Any variance from site suitability restrictions must be approved by the Oil and Gas Conservation Division (see (g)(2)(C) of this Section).

(1) **Maximum slope.** A maximum slope of five percent for all application methods.

(2) **Depth to bedrock.** Depth to bedrock will be at least 40 inches if crude oil contaminated soils or petroleum hydrocarbon-based drill cuttings are to be applied; 20 inches if salt contaminated soils are to be applied.

(3) **Soil texture.** A soil profile (as defined by USDA soil surveys) containing at least twelve inches (may be cumulative) of one of the following soil textures between the surface and the water table, unless a documented impeding layer of shale is present: loam, silt loam, silt, sandy clay loam, silty clay loam, clay loam, sandy clay, silty clay, or clay.

(4) **Salinity.** Slight salinity [defined as Electrical Conductivity (EC) less than 4,000 micromhos/cm] in the topsoil, or upper six inches of the soil, and a calculated Exchangeable Sodium Percentage (ESP) less than 10.0.

(5) **Depth to water table.** No evidence of a seasonal water table within six (6) feet of the soil surface as verified by field observation and published data.

(6) **Distance from water bodies.** A minimum distance of 100 feet from the land application site boundary to any perennial stream and 50 feet to any intermittent stream found on the appropriate United States Geological Survey (U.S.G.S.) topographic map (available for viewing at the Commission's Oklahoma City Office and District Offices); and a minimum of 100 feet to any freshwater pond, lake, or wetland designated by the National Wetlands Inventory Map Series, prepared by the U.S. Fish and Wildlife Service (available for viewing at the Commission's Oklahoma City Office). Also, see (h)(6) of this Section.

(7) **Site specific concerns.** Void of slick spots within or adjacent to the land application area, where subsurface lateral movement of water is unlikely, or areas void of concentrated surface flow such as gullies or waterways.

(d) **Sampling requirements.**

(1) **Notice to Field Inspector.** The appropriate Field Inspectors shall be contacted at least two working days prior to sampling of the receiving soil and materials to be land applied. This is to allow a Commission representative an opportunity to be present.

(2) **Receiving soil.** Sampling of the receiving soil shall be performed by, or under the supervision of, a soil scientist or other qualified person pre-approved by the Commission. Soil samples shall be taken from the proposed application area and analyzed. A minimum of four representative surface core samples from the surface (0-6 inches) and subsurface (14-20 inches) must be taken from each ten acres, or part thereof. Each group of surface core samples representative of a ten-acre area (or less) shall be combined and thoroughly mixed. A minimum one pint composite sample shall be taken and placed in a clean container for delivery to the laboratory. Alternatively, soil samples may be composited by the laboratory. All subsurface samples shall be handled in the same manner.

(3) **Materials to be land applied.** Representative samples of the materials to be land applied shall be taken, composited into a minimum one-pint sample, and placed in a clean container for delivery to the laboratory. Alternatively, materials to be land applied may be composited by the laboratory.

(e) **Analysis requirements.**

(1) **Salt contaminated soils or drill cuttings.** Analysis requirements will be dependent upon the loading method that is chosen. For most applications, loading based on Total Dissolved Solids (TDS) or Total Soluble Salts (TSS) will be most appropriate. However, applicants proposing to land apply on a site in western Oklahoma, where the soils commonly contain moderate to high levels of gypsum, may benefit from using the loading formula based on Chlorides (Cl).

(A) Samples of soil and materials to be land applied shall be tested by a laboratory proficient in testing soils. Either a 1:1 extract or saturated paste extract shall be used for sample preparation for TDS or TSS or Cl loading. A saturated paste moisture equivalent is necessary where the saturated paste sample preparation method is used.

(B) Parameters for analysis of the receiving soil shall include at a minimum EC, TDS or TSS, and ESP for TDS/TSS loading. For Chloride loading, parameters shall include Chlorides (dry weight basis) and ESP.

(C) Parameters for analysis of soils or drill cuttings contaminated by salt shall include at a minimum EC for TDS/TSS loading and both EC and Cl for Chloride loading.

(2) **Soils and drill cuttings contaminated by petroleum hydrocarbons.**

(A) Samples of soil and materials to be land applied shall be tested by a laboratory proficient in testing soils.

(B) Parameters for analysis of the receiving soil shall include at a minimum EC and ESP.

(C) Parameters for analysis of soils or drill cuttings contaminated by petroleum hydrocarbons shall include at a minimum a test of the appropriate carbon range(s), which is determined by the nature of the waste material. These include Gasoline Range Organics (GRO) - C6 to C10 (EPA test method 8015/8020 M) and ~~, Diesel Range Organics (DRO)~~

~~C10 to C28 (extractable procedure), and Oil and Grease - C20 to C50+ (EPA test method 1664)~~ TPH (Oklahoma method 1005 extended C35).

(f) **Application rates.**

(1) **Calculations.** The maximum application rate for TDS or TSS, ~~(or~~ Cl,~~)~~ and GRO, ~~DRO,~~ or TPH ~~O & G~~ shall be calculated by the applicant based upon the analyses of the materials to be land applied and the soil of the application area. For salt contaminated soils or drill cuttings, if the application area encompasses more than one soil sampling area, the rate shall be calculated in one of two ways, depending on how the application will be made. The applicant may either calculate the maximum application rate for the entire application area based upon the highest soil TDS or TSS ~~(~~or Cl~~)~~ value of any sampling area (averaging not allowed), or calculate it for each ten acre (or less) application area using the respective soil TDS or TSS ~~(~~or Cl~~)~~ values of each sampling area.

(2) **Soil loading formulas.** The maximum application rate for any application area shall be restricted by the most limiting parameter. To determine this, the soil loading formulas in Appendix I of this Chapter shall be used as applicable.

(3) **Variances.** In special situations, a request for a variance relating to soil loading of petroleum hydrocarbons may be administratively approved by the Manager of Field Operations. The applicant shall submit a written request explaining the circumstances or conditions which warrant a variance and shall also submit a management plan for reducing the petroleum hydrocarbon content in the soil to two percent or less.

(g) **Application for permit.**

(1) **Who may apply.** Only the operator responsible for generating the waste to be land applied or the operator's designated agent may apply for a land application permit, except that the Oklahoma Energy Resources Board or its designated contractor may make application to land apply materials for which there is no responsible party.

(2) **Required form and attachments.** Each application for land application of soils contaminated by salt and/or crude oil or petroleum hydrocarbon-containing deleterious substances shall be submitted to a Field Operations office on Form 1014S. An original and three copies shall be required. Attached to at least one of the copies shall be the following:

(A) Written permission from the surface owner to allow the applicant to land apply, incorporate, and fertilize materials. For purposes of obtaining such consent, the applicant shall use Form 1014L.

(B) A topographic map and the most recent aerial photograph (minimum scale 1:660) with the proposed and potential land application areas delineated as well as the location of cultural features such as buildings, water wells, etc. Both the topographic map and aerial photograph must show all areas within 1320 feet of the boundary of the land application area.

(C) Receiving site suitability report, pursuant to subsections (c) and (h)(6) of this Section, based on an on-site investigation and signed by a soil scientist or other qualified person. The report shall include detailed information concerning the site and shall discuss how all site characteristics were determined. Any requests for a variance to site suitability restrictions must be accompanied by a written justification that has been developed or approved by a soil scientist or other qualified person. The justification shall provide explanation as to safeguards which will assure that conditions of the permit will be met and there will be no adverse impacts from the land application.

(D) Analyses of receiving soil samples.

(E) Analyses of contaminated soil or petroleum hydrocarbon-based drill cuttings.

(F) For contaminated soils, an investigation report and diagram, drawn to scale, detailing the areal extent and depth of the contamination; and sampling procedures which were used to assure that representative samples were taken.

(G) Loading calculations.

(H) Copies of all chains-of-custody related to sampling.

(I) If there is an agent, a notarized affidavit designating same, signed by the operator.

(J) Other information as required by this Section or requested by a Field Operations office.

(3) **Review period.** The Field Operations office shall review the application, either approve or disapprove it, and return a copy of Form 1014S within five working days of submission of all required or requested information. If approved, a permit number shall be assigned to Form 1014S; if disapproved, the reason(s) shall be given. The applicant may make application for a hearing if it is not approved.

(h) **Conditions of permit.** Any land application which is performed under this Section shall be subject to the following conditions or stipulations of the permit:

(1) **Notice to Field Inspector.** The applicant shall notify the appropriate Field Inspector at least 24 hours prior to the commencement of land application to allow a Commission representative an opportunity to be present.

(2) **Compliance agreement.** Any person responsible for supervision of land application shall have signed a compliance agreement with the Commission.

(3) **Presence of representative.** A representative of the applicant shall be on the land application site at all times during which materials are being applied. The representative shall be an employee of the applicant, designated agent, contractor, or other person pre-approved by the Commission.

(4) **Materials to be land applied.** Land application under this Section shall be limited to soils and drill cuttings contaminated by salt and/or petroleum hydrocarbons. Petroleum hydrocarbon-contaminated soils or drill cuttings land applied under this Section shall meet the RCRA criteria for exempt or non-exempt/nonhazardous waste. Hazardous waste as defined at 40 CFR 261.3 is regulated by the Oklahoma Department of Environmental Quality.

(5) **Weather restrictions.** Land application, including incorporation, shall not be done:

(A) During precipitation events or when precipitation is imminent.

(B) When the soil moisture content is at a level such that the soil cannot readily take the addition of materials.

(C) When the ground is frozen.

(6) **Buffer zones.** Land application shall not be done within the following buffer zones, as identified in the site suitability report:

(A) Fifty feet of a property line boundary.

(B) Three hundred feet of any actively producing water well used for domestic or irrigation purposes.

(C) One-quarter (1/4) mile of any actively producing water well used for municipal purposes.

(7) **Land application rate.** The maximum calculated application rate of materials shall not be exceeded. Under no circumstances shall land applied materials exceed a two inch depth. Furthermore, no runoff or ponding of land applied materials shall be allowed. It may require more than one pass or lift to achieve the maximum application rate while avoiding runoff or ponding.

(8) **Land application method.** Application of materials shall be uniform over the approved land application area, and shall be made by a method approved by the Commission prior to use. Land applied materials shall be incorporated into the soil by disking or chiseling during or immediately after application to a minimum depth of two times the depth of ~~a~~ applied materials; however, if any contaminated sandy soil~~s~~ is applied to any clayey soil, incorporation shall be to a minimum depth of four times the depth of the applied materials.

(9) **Fertilizer.** For any land application involving petroleum hydrocarbon-contaminated soils and/or drill cuttings, fertilizer shall be applied at an appropriate rate as indicated by soil testing for available N-P-K to adjust the average carbon-nitrogen ratio in order to enhance biodegradation of the petroleum hydrocarbons and assist in reestablishing vegetation. In the absence of soil testing, Nitrogen, Phosphorus, and Potassium shall be applied at a rate of 160-40-40 lbs. per acre (actual N-P-K).

(10) **Vegetative cover.** A bona fide effort shall be made to restore or reestablish the vegetative cover within 180 days after the land application is completed. Additional efforts shall be made until the vegetative cover is fully restored or reestablished.

(11) **Time period.** Land application shall be completed within 30 days of the anticipated completion date shown on the approved application form.

(12) **Post-application report.** A post-application report shall be submitted by the operator or the operator's agent to the Manager of Field Operations within 30 days of the completion of land application. The report shall give specific details of the land application, including volumes of materials applied and an aerial photograph (minimum scale 1:660) delineating the actual area where materials were applied. The report shall contain a statement certifying that the land application was done in accordance with the approved permit.

(13) **Violations.** If the applicant violates the conditions of the permit or this Section, the land application shall be discontinued and the Field Operations office shall be contacted immediately. The Field Operations office may revoke the permit and/or require the operator to do remedial work. If the permit is not revoked, land application may resume with Field Operations' approval. If the permit is revoked, the operator may make application for a hearing to reinstate it.

(i) **Variances.** A variance from the time provisions of (d)(1), (h)(1), (h)(10) or (h)(11) of this Section may be granted by a Field Operations office for justifiable cause. A written request and supporting documentation shall be required. The Field Operations office shall respond in writing within five working days after receipt, either approving or disapproving the request.

165:10-7-27. Application of waste oil, waste oil residue, or crude oil contaminated soil by oil and gas operators and pipeline companies

(a) **Scope.** This Section shall cover the application of waste oil, waste oil residue, or crude oil contaminated soil by oil and gas operators and pipeline companies to lease roads, pipeline service and tank farm roads, well locations, and production sites. Hazardous waste as defined at 40 CFR 261.3 is regulated by the Oklahoma Department of Environmental Quality.

(b) **Permit by District Office.** A District Manager for the Conservation Division may issue to an oil or gas operator or pipeline company within the District a permit for road application of waste oil, waste oil residue, or crude oil contaminated soil to lease roads, pipeline service and tank farm roads, well locations, and production sites within the District. This subsection prohibits any operator from applying waste oil, waste oil residue, or crude oil contaminated soil without a permit. Any operator or pipeline company violating this subsection shall be fined $2,000.00.

(c) **Permit requirements.**

(1) **Use of Form 1014X.** The application to apply waste oil, waste oil residue, or crude oil contaminated soil shall be made on Form 1014X. The original and one copy are required.

(2) **Landowner permission.** Attached to the application shall be a copy of written permission by the surface owner to allow the operator or pipeline company to apply waste oil, waste oil residue, or crude oil contaminated soil as per this Section to a specific portion of real property as designated by legal description. For purposes of obtaining such consent, the applicant shall use Form 1014L.

(3) **Telephone permits.** In case of an emergency, a District Manager may issue a permit by telephone. If an operator or pipeline company obtains a permit by telephone, the operator or pipeline company shall file Form 1014X and attachments within five working days after receipt of the permit by telephone.

(4) **Conditions for permits.**

(A) Waste oil, waste oil residue, and contaminated soils applied under this Section shall consist of crude oil and materials produced with crude oil only. Hazardous waste as defined at 40 CFR 261.3 is regulated by the Oklahoma Department of Environmental Quality.

(B) If required by the District Manager, a hydrocarbon analysis shall be submitted with Form 1014X. The analysis shall be performed by a ~~state certified~~ laboratory that is state operated or certified in accordance with OCC-approved methods.

(C) Waste oil, waste oil residue, and crude oil contaminated soil shall be applied in such a manner that pollution of surface or subsurface waters will not likely occur and public and private property adjoining the application area will be protected.

(D) During application, any necessary signs, lights and other safety and warning devices shall be used as traffic requires to alert users to conditions. A sign shall be posted with the contractor's or operator's name and phone number to contact in case of an emergency.

(E) No application shall be conducted:

(i) When the temperature is less than 45^{c} F.

(ii) In any area where water collects and stands.

(iii) Where conditions such as grade, soil moisture content, soil type, tight soil conditions, or packed soil conditions cause runoff or prevent rapid absorption of the oil.

(F) Following completion of the project, there shall be a uniform soil/oil base (all liquids worked in), with no visible free-standing oil.

(G) Proper care shall be taken to avoid runoff of oil into borrow ditches or adjacent areas.

(d) **Notice to Field Inspector.** The operator or pipeline company receiving the permit shall notify the appropriate Field Inspector at least two days prior to commencement of application.

(e) **Site inspection.** At his discretion, a District Manager may request a Field Inspector of the Conservation Division or an Enforcement Officer of the Transportation Division to inspect the site at any time during the application operation to ensure compliance with this Section.

(f) **Duration of permit.** The permit shall state the duration of the permit, not to exceed 60 days. If a complaint is received or the operator or pipeline company fails to comply with either the terms of the permit or this Section, the District Manager may direct the operator or pipeline company to cease application until the problem is resolved. If necessary, the District Manager may verbally revoke the permit and/or require the operator or pipeline company to perform remedial work. If a District Manager disapproves an application or cancels a permit, then the applicant may apply to the Commission for an order under 165:5-7-41.

165:10-7-28. Application of freshwater drill cuttings by County Commissioners

(a) **Scope.** This Section shall cover the one-time application of freshwater drill cuttings by a Board of County Commissioners to a street or road.

(b) **Permits by District Office.** A District Manager for the Conservation Division may issue to any Board of County Commissioners within the District a permit for road application of freshwater drill cuttings to a street or road within the county. This Section prohibits any Board of County Commissioners from applying freshwater drill cuttings without a permit.

(c) **Site restrictions.** Application of freshwater drill cuttings shall only occur on sites having an:

(1) Electrical Conductivity (EC) no greater than 6,000 micromhos/cm; and

(2) Exchangeable Sodium Percentage (ESP) less than 15.0.

(d) **Sampling requirements.**

(1) The appropriate Field Inspector shall be contacted at least two working days prior to sampling to allow a Commission representative an opportunity to witness the sampling of the receiving soil and freshwater drill cuttings to be applied.

(2) The receiving soil shall be sampled using the following procedure:

(A) A minimum of five samples shall be taken for each one-half (1/2) mile section of road (or borrow ditch) and composited into one sample for analysis.

(B) Sampling shall be to a minimum depth of six inches.

(3) The freshwater cuttings shall be sampled by taking a minimum of one representative sample for every five cubic yards of freshwater cuttings to be applied and composited into one quart sample for analysis.

(e) **Analysis requirements.**

(1) The composite samples of soil and drill cuttings shall be analyzed by a laboratory which tests soils.

(2) The parameters for the receiving soil shall include ESP and either EC or Total Dissolved Solids (TDS)or Total Soluble Salts (TSS).

(3) The parameters for the drill cuttings shall include TDS or Total Soluble Salts (TSS).

(f) **Maximum application rate.**

(1) The maximum application rate shall be calculated by the Board of County Commissioners using the following formula:

PROCEDURE FOR CALCULATING APPLICATION RATE OF TOTAL DISSOLVED SOLIDS (TDS) OR TOTAL SOLUBLE SALTS (TSS)

_____ ppm TDS or TSS in receiving soil × 2 = _____ lbs/as TDS or TSS in receiving soil.

10,000 lbs/ac TDS or TSS− _____ lbs/ac TDS or TSS in receiving soil = Maximum TDS or TSS(lbs/ac) to be applied _____.

Maximum TDS or TSS(lbs/ac) to be applied _____ ÷(_____ ppm TDS or TSS in cuttings x. 000001) = Maximum lbs/ac of cuttings to be applied _____.

Actual weight of drill cuttings _____ lbs/cu ft × 27 = _____ lbs/cu yd.

Maximum lbs/ac to be applied _____ ÷ _____ lbs/cu yd = _____ cu yds/ac to be applied.

Total volume _____ cu yds ÷ _____ cu yds/ac = Minimum acres required _____.

(2) Calculations shall be submitted with the application.

(g) **Permit requirements.**

(1) **Use of Form 1014W.** The application to apply freshwater drill cuttings shall be made on Form 1014W. The original and one copy are required.

(2) **Telephone permits.** In case of an emergency, a District Manager may issue a permit by telephone. If any Board of County Commissioners obtains a permit by telephone, the applicant shall file Form 1014W within five working days after receipt of the permit by telephone.

(3) **Conditions for permits.**

(A) The method to be used for application of freshwater drill cuttings shall not pollute surface or subsurface waters and shall protect public and private property adjoining the application area.

(B) During application, any necessary signs, lights and other safety and warning devices shall be used to alert users to conditions. A sign shall be posted with the contractor's or authority's name to contact in case of an emergency.

(C) All free liquids shall be removed before cuttings are applied.

(D) Following completion of the project, there shall be a uniform soil/cuttings base.

(h) **Notice to Field Inspector.** The Board of County Commissioners receiving the permit shall notify the appropriate Field Inspector at least two days prior to commencement of the application.

(i) **Site inspection.** At his discretion, a District Manager may request a Field Inspector of the Conservation Division or an Enforcement Officer of the Transportation Division to inspect the site at any time during the application operation to ensure compliance with this Section.

(j) **Duration of permit.** The permit shall state the duration of the permit, not to exceed 60 days. If a complaint is received or the Board of County Commissioners fails to comply with either the terms of the permit or this Section, the District Manager may direct the Board of County Commissioners to cease application until the problem is resolved. If necessary, the District Manager may verbally revoke the permit and/or require the Board of County Commissioners to perform remedial work. If a District Manager disapproves an application or cancels a permit, then the applicant may apply to the Commission for an order under 165:5-7-41.

165:10-7-29. Application of freshwater drill cuttings by oil and gas operators

(a) **Scope.** This Section shall cover the one-time application of freshwater drill cuttings by oil and gas operators to private access areas, well locations, and production sites.

(b) **Permits by District Office.** A District Manager for the Conservation Division may issue to an operator within the District a permit for application of freshwater drill cuttings to private access areas, well locations, and production sites within the District. This Section prohibits any operator from applying freshwater drill cuttings without a permit. Any operator violating this subsection shall be fined $2,000.00.

(c) **Site restrictions.** Application of freshwater drill cuttings shall only occur on sites having an:

(1) Electrical Conductivity (EC) no greater than 6,000 micromhos/cm; and

(2) Exchangeable Sodium Percentage (ESP) less than 15.0.

(d) **Sampling requirements.**

(1) The appropriate Field Inspector shall be contacted at least two working days prior to sampling to allow a Commission representative an opportunity to witness the sampling of the receiving soil and freshwater drill cuttings to be applied.

(2) The receiving soil shall be sampled using the following procedure:

(A) A minimum of five samples shall be taken for each one-half (1/2) mile section of road (or borrow ditch), well location, or production facility and composited into one sample for analysis.

(B) Sampling shall be to a minimum depth of six inches.

(3) The freshwater cuttings shall be sampled by taking a minimum of one representative sample for every five cubic yards of freshwater cuttings to be applied and composited into one quart sample for analysis.

(e) **Analysis requirements.**

(1) The composite samples of soil and drill cuttings shall be analyzed by a laboratory which tests soils.

(2) The parameters for the receiving soil shall include ESP and either EC or Total Dissolved Solids (TDS) or Total Soluble Salts (TSS).

(3) The parameters for the drill cuttings shall include TDS or Total Soluble Salts (TSS).

(f) **Maximum application rate.**

(1) The maximum application rate shall be calculated by the operator using the following formula:

PROCEDURE FOR CALCULATING APPLICATION RATE OF TOTAL DISSOLVED SOLIDS (TDS) OR TOTAL SOLUBLE SALTS (TSS)

_____ ppm TDS or TSS in receiving soil × 2 = _____ lbs/as TDS or TSS in receiving soil.

10,000 lbs/ac TDS or TSS – _____ lbs/ac TDS or TSS in receiving soil = Maximum TDS or TSS (lbs/ac) to be applied _____.

Maximum TDS or TSS (lbs/ac) to be applied _____ ÷(_____ ppm TDS or TSS in cuttings x. 000001) = Maximum lbs/ac of cuttings to be applied _____.

Actual weight of drill cuttings _____ lbs/cu ft × 27 = _____ lbs/cu yd.

Maximum lbs/ac to be applied _____ ÷ _____ lbs/cu yd = _____ cu yds/ac to be applied.

Total volume _____ cu yds ÷ _____ cu yds/ac = Minimum acres required _____.

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(2) Calculations shall be submitted with the application.

(g) **Permit requirements.**

(1) **Use of Form 1014X.** The application to apply freshwater drill cuttings shall be made on Form 1014X. The original and one copy are required.

(2) **Landowner permission.** Attached to the application shall be a copy of written permission by the surface owner to allow the operator to apply freshwater drill cuttings as per this Section to a specific portion of real property as designated by legal description.

(3) **Telephone permits.** In case of an emergency, a District Manager may issue a permit by telephone. If an operator obtains a permit by telephone, the applicant shall file Form 1014X within five working days after receipt of the permit by telephone.

(4) **Conditions for permits.**

(A) The method to be used for application of freshwater drill cuttings shall not pollute surface or subsurface waters and shall protect public and private property adjoining the application area.

(B) During application, any necessary signs, lights, and other safety and warning devices shall be used as traffic requires to alert users to conditions. A sign shall be posted with the contractor's or operator's name to contact in case of an emergency.

(C) All free liquids shall be removed before cuttings are applied.

(D) Following completion of the project, there shall be a uniform soil/cuttings base.

(h) **Notice to Field Inspector.** The operator receiving the permit shall notify the appropriate Field Inspector at least two days prior to commencement of the application.

(i) **Site inspection.** At his discretion, a District Manager may request a Field Inspector of the Conservation Division or an Enforcement Officer of the Transportation Division to inspect the site at any time during the application operation to ensure compliance with this Section.

(j) **Duration of permit.** The permit shall state the duration of the permit, not to exceed 60 days. If a complaint is received or the operator fails to comply with either the terms of the permit or this Section, the District Manager may direct the operator to cease application until the problem is resolved. If necessary, the District Manager may verbally revoke the permit and/or require the operator to perform remedial work. If a District Manager disapproves an application or cancels a permit, then the applicant may apply to the Commission for an order under 165:5-7-41.

165:10-7-32. Application to reclaim and/or recycle produced water for surface activities related to drilling, completion, workover, and production operations from oil and gas wells

(a) **Authority to reclaim and/or recycle produced water.** No person shall use produced water for any other purpose except as provided by this section. Any operator failing to obtain a permit may be fined up to $500.00.

(b) **Scope.** This Section shall cover the reclaiming and/or recycling of produced water from oil and gas wells for a single well location for the purpose of water supply for surface activities used for a specific permitted use. This does not include the use of produced water for down- hole operations referred to as weighted water under OAC 165:10-7-24(b)(2).

(c) **Quality of produced water.** For the purposes of this rule shall be limited to Total Dissolved Solids (TDS) or Total Soluble Salts (TSS) content not to exceed 5,000 mg/l and oil and grease content not to exceed 1,000 mg/l.

(d) **Storage of produced water.** If the produced water is stored in tanks, the tanks shall be legibly marked "recycle" water.

(e) **Log of load tickets.** The operator shall maintain copies of the load tickets from wells that the produced water was obtained. Such copies shall be made available to the OCC Inspector upon request.

(f) **Notification to OCC District Office.** The Operator shall orally notify the District Office when produced water is to be initially hauled to the permitted facility.

(g) **Application for permit.**

(1) The operator of the well must apply for the permit for the reclamation of produced water.

(2) Required Application. Each application for the reclaiming and/or recycling of produced water shall be submitted to the Field Operations District office on Form 1014D.

(3) A copy of written notice to the surface owner that the applicant intends to use produced water as per 165:10-7-32 to a specific portion of their real property as designated by legal description. For purposes of notice, a written waiver from the surface owner may also be submitted.

SUBCHAPTER 21. APPLICATIONS FOR TAX EXEMPTIONS

PART 6. PRODUCTION ENHANCEMENT PROJECTS

165:10-21-23. Qualification procedure

The well operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall apply for qualification of the production enhancement project and incremental production, at the Oklahoma Corporation Commission on OCC Form 1534.

(1) OCC Form 1534 shall be completed in its entirety, and together with supporting documentation, shall be submitted to the Technical Services Department of the Conservation Division of the Oklahoma Corporation Commission for review.

(2) If the Department approves the application, ~~an order of the Oklahoma Corporation Commission shall be issued, and a copy of the order~~ a copy of the approved application shall be forwarded to the operator.

(3) If the application is denied or refused, or approval is delayed beyond sixty (60) days, the applicant may seek review by application, notice and hearing.

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

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

(1) ~~A Corporation Commission order~~ A copy of the application approved by the Corporation Commission certifying the well as production enhanced.

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

(~~3~~2) A properly completed OTC Form 328 Gross Production 841/495 Refund Report.

(~~4~~3) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission ~~order~~ application, a notarized affidavit, signed by the party named in the ~~order~~ application must be filed, authorizing the applicant to apply for the refund.

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

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

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

165:10-21-37. Qualification procedure

The well operator or one of the working interest owners, on behalf of the well operator and the other owners of the well, shall apply for qualification of the well and production at the Oklahoma Corporation Commission on OCC Form 1534.

(1) OCC Form 1534 shall be completed in its entirety, and together with supporting documentation, shall be submitted to the Technical Services Department of the

Conservation Division of the Oklahoma Corporation Commission for review.

(2) If the Department approves the application, ~~an order of the Oklahoma Corporation Commission shall be issued, and a copy~~ a copy of the approved application shall be forwarded to the operator.

(3) If the application is denied or refused, or approval is delayed beyond sixty (60) days, the applicant may seek review by application, notice and hearing.

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

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

(1) ~~A Corporation Commission order~~ A copy of the application approved by the Corporation Commission certifying the well as an inactive well for which production has been reestablished.

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

(~~3~~2) A copy of an approved OTC Form 320C that shows the date of the re-establishment of production of oil and/or gas.

(~~4~~3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report.

(~~5~~4) If the refund request is filed by any person other than the party named in the Oklahoma Corporation Commission ~~order~~ application, a notarized affidavit, signed by the party named in the ~~order~~ application must be filed, authorizing the applicant to apply for the refund.

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

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

PART 8. DEEP WELLS

165:10-21-45. General

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

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

(c) **Exemption for wells spudded between July 1, 1994, and June 30, ~~2000~~ 1997, to a depth of fifteen thousand (15,000) feet or greater.** Deep wells spudded between July 1, 1994, and June 30, ~~2000~~ 1997, and drilled to a depth of fifteen thousand (15,000) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty-eight (28) months.

(d) **Exemption for wells spudded between July 1, 1997, and June 30, ~~2006~~2002, to a depth of twelve thousand five hundred (12,500) feet.** Deep wells spudded between July 1, 1997, and June 30, ~~2006~~2002, and drilled to a depth of twelve thousand five hundred (12,500) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty-eight (28) months.

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

(1) **12,500 to 14,999 feet and spudded between July 1, 2002 and June 30, 2006.** The duration of the exemption for wells drilled to this depth is twenty-eight (28) months.

(2) **15,000 to 17,499 feet and spudded between July 1, 2002 and June 30, 2008.** The duration of the exemption for wells drilled to this depth is forty-eight (48) months.

(3) **17,500 feet or greater and spudded between July 1, 2002 and June 30, 2008.** The duration of the exemption for wells drilled to this depth is sixty (60) months.

165:10-21-47. Qualification procedure

The well operator or one of the working interest owners, on behalf of the well operator and the other owners of the well, shall apply for qualification of the well at the Oklahoma Corporation Commission on OCC Form 1534.

(1) OCC Form 1534 shall be completed in its entirety, and together with supporting documentation, shall be submitted to the Technical Services Department of the Conservation Division of the Oklahoma Corporation Commission for review.

(2) If the Department approves the application, ~~an order of the Oklahoma Corporation Commission shall be issued, and a copy~~ a copy of the approved application shall be forwarded to the operator.

(3) If the application is denied or refused, or approval is delayed beyond sixty (60) days, the applicant may seek review by application, notice and hearing.

(4) When processing applications for qualification for an exemption for Deep Wells as provided in this Section, the Oklahoma Corporation Commission shall give priority to those applications filed for an exemption pursuant to OAC 165:10-21-45(e)(2) and OAC 165:10-21-45(e)(3) in order for applications to comply with the six-month filing period as provided for in Title 68 O.S., §1001(H)(5). The

application should be filed within six (6) months after the first day of the fiscal year in which the refund is first available.

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

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

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

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

(~~3~~2) A copy of an approved OTC Form 320A that shows date of first sale of production.

(~~4~~3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report.

(~~5~~4) If the refund request is filed by any person other than the party named in the ~~Oklahoma Corporation Commission order~~ application, a notarized affidavit, signed by the party named in the ~~order~~ application must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for prior periods; claim limitation after July 1, 2003 and July 1, 2005.** Approval of a "Deep Well Incentive" for production periods prior to July 1, 2003 shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax. Effective July 1, 2003, claims for rebate filed with the Oklahoma Tax Commission shall be subject to a time limitation pursuant to Title 68 O.S., ~~Section~~ §1001(L). Effective July 1, 2005, claims for rebate provided in OAC 165:10-21-45(e)(2) and OAC 165:10-21-45(e)(3) filed with the Oklahoma Tax Commission shall be subject to a time limitation pursuant to Title 68 O.S., §1001(H)(5).

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

PART 9. NEW DISCOVERY WELLS

165:10-21-57. Qualification procedure

The well operator or one of the working interest owners, on behalf of the well operator and the other owners of the well, shall apply for qualification of the well at the Oklahoma Corporation Commission on OCC Form 1534.

(1) OCC Form 1534 shall be completed in its entirety, and together with supporting documentation, shall be submitted to the Technical Services Department of the Oklahoma Corporation Commission for review.

(2) If the Department approves the application, ~~an order of the Oklahoma Corporation Commission shall be issued, and a~~ an approved copy shall be forwarded to the operator.

(3) If the application is denied or refused, or approval is delayed beyond sixty (60) days, the applicant may seek review by application, notice and hearing.

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

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

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

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

(~~3~~2) A copy of an approved OTC Form 320A that shows date of first sale of production.

(~~4~~3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report.

(~~5~~4) If the refund request is filed by any person other than the party named in the ~~Oklahoma Corporation Commission order~~ application, a notarized affidavit, signed by the party named in the ~~order~~ application must be filed, authorizing the applicant to apply for the refund.

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

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

PART 11. HORIZONTALLY DRILLED PRODUCING WELLS

165:10-21-67. Qualification procedure

The well operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall apply for qualification of the production from horizontally drilled wells, at the Oklahoma Corporation Commission on OCC Form 1534.

(1) OCC Form 1534 shall be completed in its entirety, and together with supporting documentation, shall be submitted to the Technical Services Department of the

Conservation Division of the Oklahoma Corporation Commission for review.

(2) If the Department approves the application, ~~an order of the Oklahoma Corporation Commission shall be issued, and~~ a copy ~~of the order~~ shall be forwarded to the operator.

(3) If the application is denied or refused, or approval is delayed beyond sixty (60) days, the applicant may seek review by application, notice and hearing.

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

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

(1) A copy of the application approved by the Corporation Commission ~~order~~ certifying the well as a horizontally drilled well.

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

(~~3~~2) A copy of an approved OTC Form 320A that shows the date of initial production.

(~~4~~3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report.

(~~5~~4) If the refund request is filed by any person other than the party named in the ~~Oklahoma Corporation Commission order~~application, a notarized affidavit, signed by the party named in the ~~order~~application must be filed, authorizing the applicant to apply for the refund.

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

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

PART 13. INCREMENTAL PRODUCTION FROM ENHANCED RECOVERY PROJECTS

165:10-21-77. Qualification procedure

The provisions of this Section establish criteria for determining if an operator of an enhanced recovery project or property has met the required conditions to qualify the incremental production from such project or property for the exemption from the Gross Production Tax. [**See:** 68 O.S. §1001]

(1) **~~Application to Oklahoma Corporation Commission;~~ Administrative approval and determination~~;~~ ~~order.~~** An operator seeking an exemption of incremental production from the gross production tax shall make application to the Oklahoma Corporation Commission, as provided in OAC 165:5-7-14, for a determination that such project or property qualifies, a determination of the starting date, and of the base production amount.

(A) If the application is ~~administratively~~ approved, ~~an order of the Oklahoma Corporation Commission shall be issued~~a copy shall be forwarded to the operator..

(B) To obtain the tax exemption, the operator shall forward a copy of the ~~Oklahoma Corporation Commission order~~ approved application to the Oklahoma Tax Commission, together with any other data required by that agency.

(2) **Tax Commission approval of exemption.** An operator desiring an exemption from the gross production tax shall make application by letter to the Audit Division, Oklahoma Tax Commission. Such application shall be accompanied by:

(A) A copy of the approved application by the Corporation Commission ~~Order approving such application and~~ containing a determination of the project beginning date, base production amount and project payback.

(B) The ratio of working interest/royalty interest in the well. Only the incremental production attributable to the working interest owners shall be exempted from the gross production tax. For purposes of this exemption, overriding royalty shall be included in working interest.

(C) A schedule of production, by month, of the gross amounts of crude oil or other liquid hydrocarbons produced, and the gross values thereof, from the project beginning date until the date application is made to the Tax Commission.

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

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

165:10-21-82.2. Qualification procedure

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

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

(1) If the application is administratively approved, ~~an order of the Oklahoma Corporation Commission shall be issued~~ a copy shall be forwarded to the operator.

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

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

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

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

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

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

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

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

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

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

PART 15. GENERAL PROVISIONS

165:10-21-85. Election of exemption

(a) **Election of exemptions generally.** Persons entitled to exemption based upon production from qualifying oil, gas, or oil and gas wells shall be entitled only to the exemption granted pursuant to:

(1) Incremental production from enhanced recovery projects, as authorized by 68 O.S. ~~Supp. 2000~~ §1001(D) and Part 13 of this Subchapter; **or**,

(2) Horizontally drilled production wells, as authorized by 68 O.S. ~~Supp. 2000~~ §1001(E) and Part 11 of this Subchapter; **or**,

(3) Reestablished production from inactive wells, as authorized by 68 O.S. ~~Supp. 2000~~ §1001(F) and Part 7 of this Subchapter; **or**,

(4) Production enhancement projects, as authorized by 68 O.S. ~~Supp. 2000~~ §1001(G) and Part 6 of this Subchapter; **or**,

(5) Production from deep wells, as authorized by 68 O.S. ~~Supp. 2000~~ §1001(H) and Part 8 of this Subchapter; **or**,

(6) Production from new discovery wells, as authorized by 68 O.S. ~~Supp. 2000~~ §1001(I) and Part 9 of this Subchapter; **or,**

(7) Production from wells located within the boundaries of three-dimensional seismic shoot, as authorized by 68 O.S. §1001(J) and Part 14 of this Subchapter.

(b) **Special provision.** Expiration of an exemption available for production from a qualifying well pursuant to one of Subsections (a)(2) through (a)(6) of this Section does not prohibit any person from qualifying for the exemption provided for in Subsection (a)(1).

(c) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

PART 17. SALES TAX EXEMPTION FOR ELECTRICITY AND ASSOCIATED DELIVERY AND TRANSMISSION SERVICES SOLD FOR OPERATION OF RESERVOIR DEWATERING PROJECT AND/OR UNIT

165:10-21-92. Qualification procedure

(a) **Applicable operations.** The provisions of this Section establish criteria for determining if an area and reservoir(s) can be classified a reservoir dewatering project and/or a reservoir dewatering unit, beginning January 1, 2004, for the purpose of an exemption from sales taxes levied on electricity and associated delivery and transmission services sold to an oil and gas operator for a reservoir dewatering project and associated operations commencing on or after July 1, 2003.

(b) **Application to the Oklahoma Corporation Commission.** An oil and gas operator seeking the classification of an area and reservoir(s) as a reservoir dewatering project and/or reservoir dewatering unit pursuant to this Part shall file an application with the Corporation Commission on a Form 1535 for a determination that the project and/or unit qualifies for the exemption, as provided in 68 O.S. 2002 Supp., §1357(28). The operator shall attach to the Form 1535 a copy of the following information:

(1) A production test or other appropriate data showing the initial water-to-oil ratio is greater than or equal to five-to-one (5-to-1) or is greater than or equal to the appropriate gas-to-water ratio calculated using the gas conversion factor outlined in OAC 165:10-21-90(d). For this purpose, a Corporation Commission Form 1013 may be filed with the sales tax exemption application to demonstrate the initial 5-to-1 water-to-oil ratio for the reservoir.

(2) Geological structure and isopach maps for the applicable reservoir showing its geological characteristics; and any additional engineering and geological data or information deemed necessary by the Conservation Division to evaluate the application.

(3) A schematic diagram of the electrical grid and dewatering and water disposal equipment associated with the reservoir dewatering project covered by the application.

(c) **Administrative approval~~, determination and order~~ and determination.**

(1) If the application is administratively approved, ~~an order of the Oklahoma Corporation Commission shall be issued~~a copy shall be forwarded to the operator.

(2) To obtain the tax exemption, the operator should contact the Director's Office, Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, Ok. 73194.

(3) Any data, maps and other information submitted with the Form 1535 for determination that an area and reservoir qualify for the exemption provided in this Part shall be held as confidential information by the Conservation Division and/or Corporation Commission, and ~~upon approval through issuance of a Commission order,~~ shall be returned to the applicant or destroyed upon approval of the application.

PART 19. STATE SALES TAX EXEMPTION FOR ELECTRICITY SOLD FOR OPERATION OF ENHANCED RECOVERY METHODS ON A SPACING UNIT OR LEASE

165:10-21-95. General

(a) **Scope.** This Part deals with the designation by the Oklahoma Corporation Commission (Corporation Commission or Commission) of enhanced recovery methods on a spacing unit or lease for the purpose of an exemption, beginning July 1, 2006, from sales taxes levied on electricity sold to an oil and gas operator for such operations, as provided in 68 O.S. §1357(32).

(b) **Distinction from designation as enhanced recovery project pursuant to application for underground injection, spacing or unitization.** The designation of enhanced recovery methods on a spacing unit or lease pursuant to this Part shall be separate and distinct from the designation of an enhanced recovery project otherwise provided by Commission rules. The Commission's designation pertaining to the instant sales tax exemption shall be made by application under this Part and not as a result of an application for: (1) enhanced recovery project designation under OAC 165:10-5-4; (2) drilling and spacing units under OAC 165:10-15-1 and OAC 165:10-15-18 (oil allowables), OAC 165:10-17-2 through 10-17-16 (gas allowables), OAC 165:10-3-28 (horizontal drilling), or any spacing application under OAC 165:10-1-22; or (3) unitization under Title 52 O.S., § 287.1 et seq. and OAC 165:5-7-20.

165:10-21-96. Definitions

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

"Enhanced recovery methods" means production methods by which oil is produced, or is attempted to be produced, including but not limited to, increased pressure in a producing formation through use of water or saltwater if the electrical usage is associated with and necessary to the operation of equipment required to inject or circulate fluids in the producing formation for the purpose of forcing oil or petroleum into a wellbore for eventual recovery and production from the wellhead.

165:10-21-97. Qualification procedure

(a) **Applicable operations.** The provisions of this Section establish criteria for designating enhanced recovery methods on a spacing unit or lease, beginning July 1, 2006, for the purpose of an exemption from sales taxes levied on electricity sold to an oil and gas operator for such operations.

(b) **Application to the Oklahoma Corporation Commission.** An operator seeking the designation of enhanced recovery methods on a spacing unit or lease pursuant to this Part shall file an application with the Corporation Commission on a Form 1535 for a determination that the operations qualify for the exemption, as provided in 68 O.S. §1357(32). The operator shall attach to the Form 1535 a copy of the following information:

(1) A production test or other appropriate data showing the oil production from the spacing unit or lease did not exceed ten (10) barrels per day prior to the use of enhanced recovery methods and the total content of oil recovery prior to the use of enhanced recovery methods did not exceed one percent (1%) by volume. For this purpose, a Corporation Commission Form 1535 may be filed with the sales tax exemption application to demonstrate the daily rate and total content of oil recovery by volume from the spacing unit or lease prior to use of enhance recovery methods.

(2) Geological structure and isopach maps for the producing formation and any additional engineering and geological data or information deemed necessary by the Conservation Division to evaluate the application.

(3) A map and schematic diagram of the producing wells, underground injection or disposal wells, and other water injection or circulating equipment associated with the enhanced recovery methods on a spacing unit or leased covered by the application.

(c) **Administrative approval and determination.**

(1) If the application is administratively approved, a copy shall be forwarded to the operator.

(2) To obtain the tax exemption, the operator should contact the Director's Office, Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK. 73194.

(3) Any data, maps and other information submitted with the Form 1535 for designation that enhanced recovery methods on a spacing unit or lease qualify for the exemption provided in this Part shall be held as confidential information by the Conservation Division and Corporation Commission, and upon approval of the application, shall be returned to the applicant or destroyed.

[OAR Docket #06-1130; filed 5-26-06]

TITLE 165. CORPORATION COMMISSION CHAPTER 25. UNDERGROUND STORAGE RULES

[OAR Docket #06-1030]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 25. [AMENDED]
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Subchapter 2. General Requirements for Underground Storage Tank Systems
Part 1. Codes and Standards
165:25-2-2. Incorporated codes and standards [AMENDED]
Subchapter 3. Release Prevention and Detection Requirements
Part 1. Release Prohibition and Detection Requirements
165:25-3-6. Monitoring requirements for piping [AMENDED]
Subchapter 8. Special Requirements For Underground Storage Tank Systems Utilized By Marinas
Part 1. General Application And Compliance Provisions
165:25-8-1. Application [AMENDED]
165:25-8-2 Release detection requirements for marinas [NEW]
Part 3. Over-Water Piping Requirements
165:25-8-3 Over-water piping at marinas [NEW]
165:25-8-4 Installation requirements for over-water piping [NEW]
165:25-8-5. Underground piping materials [REVOKED]
165:25-8-7. Aboveground piping at marinas [REVOKED]
165:25-8-8. Installation and monitoring requirements for piping [REVOKED]
Part 5. Dispenser Requirements
165:25-8-14. Dispenser hose [AMENDED]
165:25-8-15. Nozzles [AMENDED]
Part 9. Dispensing Procedures
165:25-8-29. Attendants at marinas [AMENDED]
Part 11. Miscellaneous Safety Requirements
165:25-8-35. Required signs [AMENDED]
165:25-8-36. Fire extinguishers [AMENDED]
Gubernatorial approval:
October 6, 2005
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23 OK Reg 137
Docket number:
05-1299
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
OAC 165:25-1-11 definitional section is amended to add the abbreviation OCC to the definition of Commission, and to renumber flammable liquids.

OAC 165:25-1-23 is amended to address specified applications and the limitation of regulation of airport hydrant systems and emergency power generation tanks.

OAC 165:25-1-24 is amended to clarify exclusions for emergency backup tanks.

OAC 165:25-1-25 is amended to move Part 6 Administrative Provisions, to Part 5, Scope of Rules.

OAC 165:25-1-32 is a new rule that provides for pre-approval consultation with Commission staff prior to tank installation.

OAC 165:25-1-33 is a new rule being moved from OAC 165:25-3-50.

OAC 165:25-1-35 is a new rule being moved from OAC 165:25-3-51.

OAC 165:25-1-37 is a new rule being moved from OAC 165:25-3-52.

OAC 165:25-1-41 is amended as it relates to the Commission's website for compliance forms.

OAC 165:25-1-42 is amended to all methods of corrosion protection for any tank.

OAC 165:25-1-48 is amended to require performance of line tightness tests and reported on a Commission form.

OAC 165:25-1-55 is amended to include a verified tank closure statement.

OAC 165:25-2-2 is amended to the extent that the adoption of codes and standards incorporated by reference shall be subordinate to a conflicting underground storage tank rule, and adds/removes additional standards.

OAC 165:25-2-4 is amended by adding an additional reference for financial responsibility.

OAC 165:25-2-33 is amended to delete the word new and for renumbering

OAC 165:25-2-39 is amended by striking the reference to aboveground and requiring visual inspection of certain equipment.

OAC 165:25-2-40 is amended to provide for installation testing.

OAC 165:25-2-42 is amended by striking the word certified and substituting licensed, and requiring installer certification on system installation.

OAC 165:25-2-51 is amended by adding additional corrosion protection standards.

OAC 165:25-2-53 is amended to require a qualified corrosion protection tester.

OAC 165:25-2-53.1 is a new rule regarding internal lining requirements.

OAC 165:25-2-54 is amended to require certain underground piping materials and replacement of the entire product line in the event of line failure or repair.

OAC 165:25-2-55 is revoked and relocated to OAC 165:25-2-51.

OAC 165:25-2-72 is amended to provide for UL rate dispenser hoses and replacement of damaged hoses.

OAC 165:25-2-77 is amended to reflect code compliance for pre-July 15 2002 installations.

OAC 165:25-3-5 is amended to provide for tank tightness testing once every 5 years, with corrosion protection.

OAC 165:25-3-5.2 is amended to provide 10 year expiration of stand alone leak detection methods, tank testing by personnel certified by the tank manufacturer, and use of the Commission prescribed form for monthly fuel reconciliation.

OAC 165:25-3-5.3 is amended to require a vapor monitoring well down gradient of the tank excavation.

OAC 165:25-3-5.4 is amended to remove the reference to free product removal.

OAC 165:25-3-5.5 is amended to clarify double walled tank monitoring requirements.

OAC 165:25-3-5.7 is amended to establish restrictions and guidelines on manual tank gauging.

OAC 165:25-3-5.9 is a new rule providing for statistical inventory reconciliation (SIR).

OAC 165:25-3-6 is amended to include underground piping installation and provide for electronic line leak detection, requirements for new suction piping, clarifies that double walled piping with sump sensors may be used in lieu of annual line tightness testing, and establishes methods of release detection for suction piping.

OAC 165:25-3-8 is amended to include investigation of releases, and a requirement for precision tightness testing.

OAC 165:25-5-2 is amended to include the EPA upgrade date.

OAC 165:25-6-1 is amended to strike superfluous language.

OAC 165:25-6-36 is revoked as it concerns source of ignition.

OAC 165:25-8-1 is amended by striking the requirement for marinas to upgrade their underground piping by a date certain, relocating the requirement for a UST Installer to install UST's and piping, and redirecting the requirements for dock or pier product to certain rules.

OAC 165:25-8-2 is a new rule establishing an annual line tightness test to be performed no later than April 1st of each year.

OAC 165:25-8-3 is a new rule addressing a requirement for over-water piping at marinas.

OAC 165:25-8-4 is a new rule addressing installation requirements for over-water piping at marinas.

OAC 165:25-8-5 is revoked as it concerns underground piping materials.

OAC 165:25-8-7 is revoked as it concerns aboveground piping at marinas.

OAC 165:25-8-8 is revoked regarding Installation and monitoring requirements for piping.

OAC 165:25-8-14 is amended to allow the coupling of two or more hoses at marinas.

OAC 165:25-8-15 is amended to strike the reference to latch open devices.

OAC 165:25-8-29 is amended to include certain requirements for emergency shut-off devices and signage at unattended dispensers.

OAC 165:25-8-35 is amended by striking the requirement for two inch (2") letters on required signs, and establishing lettering of $\frac{1}{4}$ to $\frac{1}{2}$ inch text.

OAC 165:25-8-36 is amended by increasing the number of required fire extinguishers at marinas from two to three, and requiring the fire extinguishers to be located within fifty feet instead of one hundred feet of certain facilities.

OAC 165:25-14-1 is amended to include Subchapter 5 as applicable to bulk plant facilities.

OAC 165:25-18-19 is amended to include the statutory penalties of 17 O.S. §365 (H).

Appendix S fine citation table is amended to include fines for failure to notify the Division of tank closure, and failure to maintain statistical inventory reconciliation.

The remaining rules were amended to relocate or renumber so as to appear in the proper context of the rule body.

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

PART 3. DEFINITIONS

165:25-1-11. Definitions

In addition to the terms defined in 17 O.S. § 303, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"ANSI" means the American National Standards Institute.

"API" means the American Petroleum Institute.

"ASTM" means the American Society for Testing and Materials.

"Agent" means a person authorized by another to act on their behalf, either out of employment or contract.

"Airport" means landing facility for aircraft that is are routinely available for public use (whether routinely used or not). Airports as used in this Chapter do not include private airstrips or private airports.

"Ancillary equipment" means any device including, but not limited to : 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.

"ATG" means automatic tank gauging.

"Backfill" is the material that is placed in a tank and/or piping excavation to support and separate the tank and/or piping, from the natural environment.

"Beneath the surface of the ground" means beneath the ground's surface or otherwise covered with materials so that physical inspection is precluded or impaired.

"BTEX" means benzene, toluene, ethylbenzene and xylene.

"Bulk plant" means a petroleum storage tank facility where gasoline, aviation fuel, diesel and/or volatile blending materials used in motor fuels, like kerosene and ethanol, are received by tank vessels, pipelines, tank cars or tank vehicles and are stored or blended in mass quantities or bulk for the purpose of distribution by a tank vessel, pipeline, tank car, tank vehicle, portable tank or other container, for wholesale or retail sale.

"Cathodic protection" means a technique designed to prevent the corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, protection can be accomplished with an impressed current or galvanic anode system.

"Change in service" means discontinuing the use of a petroleum storage tank system for purposes regulated by the Commission.

"Commission" means the Oklahoma Corporation Commission (OCC) and includes its designated agents or representatives.

"Compatible" means the ability of two or more substances to maintain their respective physical properties upon contact with one another for the design life of the petroleum storage tank system under conditions likely to be encountered in the system.

"Construction tank" means a fuel tank used for a limited period of time at a construction site.

"Contaminants" or **"contamination"** means concentrations of chemicals at levels that may cause adverse human health or environmental effects and/or nuisance conditions.

"Corrosion expert" means a person who has knowledge of the physical sciences and principles of engineering and mathematics, acquired by education and/or experience, and is qualified to engage in the practice of corrosion control on buried or submerged metal tanks and metal piping systems. The person must be NACE-certified or be a Registered Professional Engineer who has education and experience in corrosion control of buried or submerged metal tanks and metal piping systems.

"Corrosion technician" or **"cathodic protection tester"** means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"Dielectric material" means a material that does not conduct direct electric current. Dielectric coatings are used to electrically isolate portions of tank systems under or in contact with the ground. Dielectric bushings are used to electrically isolate portions of the underground storage tank system (e.g., tank from piping).

"Division" means the Petroleum Storage Tank Division (PSTD) of the Corporation Commission.

"EPA" means the United States Environmental Protection Agency.

"Excavation zone" or **"excavation area"** means the volume containing the underground storage tank system and backfill materials, bounded by the ground surface, walls, and floor of the pit and trenches into which the underground storage tank system is placed at the time of installation.

"Farm" means the planting, growing, cultivation and harvesting of shrubs, flowers, trees and other plants for sale. Farms also include ranching and dairy operations. Rural residential or non-commercial agricultural tanks are not included.

"Flammable liquids" means all grades of gasoline, kerosene, diesel fuel, and aviation fuel having a vapor pressure not exceeding forty (40) pounds per square inch (psi) absolute at one hundred (100) degrees Fahrenheit.

(A) Class I liquids.

(i) Class IA liquids have flash points below 73 degrees Fahrenheit and boiling points below 100 degrees Fahrenheit.

(ii) Class IB liquids have flash points below 73 degrees Fahrenheit and boiling points at or above 100 degrees Fahrenheit.

(iii) Class IC liquids have flash points at or above 73 degrees Fahrenheit and boiling points below 100 degrees Fahrenheit.

(B) Class II liquids. Class II liquids have flash points at or above 73 degrees Fahrenheit and below 140 degrees Fahrenheit.

(C) Class III liquids.

(i) lass IIIA liquids have flash points at or above 140 degrees Fahrenheit and below 200 degrees Fahrenheit.

(ii) Class IIIB liquids have flash points at or above 200 degrees Fahrenheit.

"Fleet and commercial" means any facility as defined in this Chapter that uses underground storage tanks to store gasoline or diesel fuel for use in its own vehicles.

"Flow-through process tank" means a tank that forms an integral part of a production process through which there is a steady, variable, recurring or intermittent flow of material during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction to the process or for the storage of finished products or by-products from the production process.

"Generation facilities" means those tanks that are permanently installed, which routinely contain fuel to be used in emergency generators in the event of a power failure.

"Impervious barrier" means a barrier of sufficient thickness, density, and composition that is impenetrable to a regulated substance, has a permeability of at least 1×10^{-6} cm/sec., and will prevent the discharge into the environment of any regulated substance for a period of at least as long as the maximum anticipated time during which the regulated substance will be in contact with the impervious material.

"In service" means a petroleum storage tank that contains a regulated substance, and/or has a regulated substance regularly added to or withdrawn from it.

"Marina" means any fuel storage facility located by the water for the purpose of fueling watercraft.

"Monitor well" means a piezometer or other cased and screened excavation, boring or drilled hole, installed in any way that can be used for the continuous or periodic evaluation of groundwater quality or the detection of soil vapors.

"Operational life" means the period beginning from the time installation of the tank or system is commenced until it is properly closed or removed as provided for in this Chapter.

"Out of service" means an underground storage tank or system that:

(A) Is not in use (i.e., does not have regulated substances added to or withdrawn from the tank system); and

(B) Is intended to be placed back in service.

"Overfill" means a release that occurs when an underground storage tank is filled beyond its capacity.

"Person in charge" means the owner or person designated by the owner or operator as the one with direct supervisory responsibility for an activity or operation at a petroleum storage tank system or facility.

"Positive sampling, testing, or monitoring results" means the results of sampling, testing, or monitoring using any of the release detection methods described in this Chapter that indicate that a release from an underground storage tank system may have occurred.

"Private airport" means an airport used only by its owner and regulated as a fleet and commercial facility.

"Private airstrip" means a personal residential takeoff and landing facility part of the airstrip owner's residential property.

"PST" means petroleum storage tank.

"Public Utility" means any entity providing gas, electricity, water, or telecommunications services for public use.

"Regulated substance" means antifreeze, motor oil, motor fuel, gasoline, kerosene, diesel or aviation fuel. It does not include compressed natural gas.

"Release detection" means determining whether a release of regulated substances has occurred from a petroleum storage tank or system into the environment or into the interstitial area between the underground storage tank system and its secondary barrier.

"Repair" means to restore a tank or petroleum storage tank system component that has caused a release of product from the petroleum storage tank system.

"Residential tank" means an underground storage tank or system located on the property where contents are used by the residential occupants of the property.

"Responsible person" means a person other than a petroleum storage tank system owner or operator, such as an adjacent property owner, impacted party, or city, seeking corrective action of real property, and submits itself to the jurisdiction of the Commission.

"Retail facility" means a service station, convenience store or any other facility that is open to the general public.

"Sacrificial anode" means a device used to reduce or prevent corrosion of a metal in an electrolyte by galvanic coupling to a more anodic metal.

"Secondary containment" means a system installed around an underground storage tank or system that is designed to prevent a release from migrating beyond the secondary containment system outer wall (in the case of a double-walled tank system) or excavation area (in the case of a liner or vault system) before the release can be detected. Such a system may include, but is not limited to, impervious barriers (both natural and synthetic), double walls, or vaults.

"Source of ignition" means flammable tobacco products or smoking materials, lighters or operating internal combustion engines and includes fixed sources of ignition like open flame heaters, pilot lights, electric heating elements or electric motors with exposed brushes or any machinery that produces exposed sparks while in operation.

"TCLP" means toxicity characteristic leaching procedure, a test procedure for determining if a solid waste is hazardous because it exhibits toxicity characteristics as enforced under Resource Conservation and Recovery Act.

"Tank tightness testing" or **"precision testing"** means a procedure for testing an underground storage tank system's ability to prevent an inadvertent release of any stored regulated substances into the environment.

"Temporary closure" or **"TOU"** means the status of an underground storage tank system that has been taken out of service.

"TPH" means total petroleum hydrocarbons.

"Underground storage tank" or **"UST "** or **"tank"** means a regulated storage tank that has ten percent or more of its volume beneath the surface of the ground.

"Underground storage tank system" means an underground storage tank and any connected aboveground or underground piping, dispensers, and ancillary equipment.

"Used Oil" is any oil or similar petroleum substance that has been refined from crude oil or synthetic oil; used for its designed or intended purposes, and contaminated as a result of such use by physical or chemical impurities.

PART 5. SCOPE OF RULES

165:25-1-23.1. Specified applications

The classes of underground storage tanks or systems are subject to specified regulations of this Chapter as follows:

(1) Airport hydrant fuel distribution systems are subject to release reporting, investigation, response and corrective action requirements only.

(2) Emergency power generator tanks are not subject to release detection requirements; owners and operators of these systems must comply with all other requirements of this Chapter.

165:25-1-24.1. Citation of rules

This Chapter will be known as the Oklahoma Corporation Commission's Rules and Regulations Governing Underground Storage Tanks and is to be cited as OAC 165:25.

PART 6. ADMINISTRATIVE PROVISIONS

165:25-1-25. Citation of rules [RENUMBERED TO 165:25-1-24.1]

~~This Chapter will be known as the Oklahoma Corporation Commission's Rules and Regulations Governing Underground Storage Tanks and is to be cited as OAC 165:25.~~

165:26-1-31. Consultation of Petroleum Storage Tank Division

At a tank owner's request, the Petroleum Storage Tank Division will confer with a tank owner planning a new installation or a reconfiguration of an existing installation to assure the tank owner of compliance in advance of the change or possible variances from this chapter.

PART 9. NOTIFICATION AND REPORTING REQUIREMENTS

165:25-1-41. General reporting requirements

The Commission may require owners, operators, of underground storage tank systems to provide information it deems necessary for the protection of human health, property and the environment. Use of the designated OCC form(s) is required for tank registration, change in ownership, monthly release detection, testing, temporary change in service, permanent closure, or return to service. These forms are available at the OCC website, PSTD webpage: www.occeweb.com, follow link to Petroleum Storage Tank Division and link to PSTD Compliance Forms.

165:25-1-42. New tank systems

(a) Persons intending to install a new underground storage tank and/or new underground piping must give the Petroleum Storage Tank Division notification of the installation at least 24 hours before the tank and/or lines are to be installed.

(b) Owners of all new underground storage tank systems must notify the Commission of a new installation before any fuel is dispensed at a facility. The notice must be given on a form specified by the Commission and include at a minimum, the date of installation, the location, type of tank construction and piping construction, size of tank installed, the type of release detection method utilized, and the type of regulated substance being stored. Copies of the tank tightness testing, line tightness testing, and line leak detector testing performed at installation must be submitted with the notification form.

(c) Owners of new systems must certify, either in the notification form or attachments to the form, the following:

(1) Installation of tanks and piping meet the requirements of this Chapter.

(2) ~~Cathodic~~ Corrosion protection of ~~steel tanks~~ the tank system meets the requirements of this Chapter.

(3) The release detection method utilized meets the requirements of this Chapter.

(4) If monitoring wells are the selected method of leak detection, the plans for their placement must be approved by the Petroleum Storage Tank Division before they are installed. The installation and use of monitoring wells for the purpose of monthly release detection must comply with 165:25-3-5.3 and/or 165:25-3-5.4.

(d) All owners of new underground storage tank systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping complies with the requirements of this Chapter.

(e) Any person who sells a tank intended to be used as an underground storage tank must notify the purchaser of the tank of the owner's installation notification obligations under this Chapter.

165:25-1-48. Tank and line tightness testing

(a) The results of any tank and line tightness testing required by this Chapter in which any part of the tank system tested fails to perform in accordance with the requirements of this Chapter must be reported by the owner and/or operator or their employees or agents within 10 days of the testing. The notice shall include:

(1) The types of testing equipment used.

(2) The name of the company performing the test.

(3) The name of the tester performing the test.

(4) The method of testing used.

(5) The results of the test.

(6) The details of steps taken or to be taken by the owner to repair, replace or remove the tank system.

(b) Hydrostatic line tightness tests and line leak detector tests must be conducted in accordance with and reported on the prescribed Commission form.

(c) The tester performing line and leak detector tests must also certify that the line leak detector is installed properly.

PART 11. RECORDKEEPING

165:25-1-55. Tank installation, closure and removal records

(a) Owners and operators of underground storage tank systems must maintain records regarding the installation for the lifetime of the system; or, at the owner's option, give copies of installation records to the Petroleum Storage Tank Division for retention in the Division's files. Owners who have purchased systems must maintain the installation information if it is available.

(b) Owners and operators of underground storage tank systems must maintain records capable of demonstrating compliance with the closure and removal requirements for tanks that are temporarily taken out of service or permanently removed. These closure and removal records must provide the results of any excavation area site assessment required in ~~165:25-3-65~~ 165:25-2-136 for permanently removed tanks. These results must be maintained for at least 3 years after removal of the tanks and permanent closure of the system in one of the following ways:

(1) By the owner or operator who took the underground storage tank system out of service,

(2) By the current owner or operator of the property where the tanks were located, or

(3) By mailing these records to the Commission.

(c) The owner or owner's representative (as directed the owner) must submit a report in writing to the Commission within 45 days from the date the tanks are permanently taken out of service or removed. The information must include, but is not limited to, the following:

(1) Owner's name, address and facility location.

(2) An accurate drawing showing the location of the tank, piping runs, dispensing units, property lines, and any sampling locations.

(3) Disposition of the soil removed from the tank and piping areas.

(4) Disposition of the tanks.

(5) Copies of laboratory reports on any samples collected. The lab reports must show the facility address and sample identification matching code systems used in the closure report. The part of a closure report pertaining to sampling must contain a verification statement signed by the licensed Remediation Consultant in supervisory control of the sampling.

(6) Verification statement by the OCC licensed UST Remover that closure was supervised and performed in accordance with OCC rules and regulation found in this Chapter.

165:25-1-56. Release detection and cathodic protection records

(a) Owners and operators of underground storage tank systems regulated by this Chapter must maintain release detection records for a minimum of one year.

(b) Owners and operators of underground storage tank systems regulated by this Chapter who use cathodic protection must maintain records that demonstrate compliance with the performance standards of this Chapter.

(1) Records must include the original cathodic protection design with drawings or plans depicting all of the cathodic protection system components, along with the credentials of the company which designed the system.

(2) Rectifier readings for impressed current systems conducted at least every 60 days.

(3) Results of the last three inspections or cathodic protection system tests completed by a corrosion ~~technician~~ tester.

(c) If external leak detection methods are used, the records must include the dates the monitoring wells were checked, the name of the person performing the inspection, the type of instrument used, and calibration data on the instrument.

PART 17. LICENSING PROCEDURES

165:25-1-101. Licensing procedure for UST Installers

(a) Any individual who would like to become a licensed UST Installer must:

(1) Complete an OCC UST Installer application form.

(2) Provide sufficient proof of two years related work experience, completed within the last five years, with supervised active participation in the completion of at least three installations. If applicant is a current UST installer license holder in another state, the work experience may be substituted for each confirmed year he or she held the license.

(3) The individual must pass an examination administered by the Commission.

(4) Installers must pay fees for applications, examinations, and licensing according to the schedule provided in OAC 165:5, the Commission's Rules of Practice.

(5) Installers must also certify that they will comply with all Commission rules and requirements for underground storage tanks.

(b) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete will result in forfeiture of fees and will require a new application and appropriate fees.

(c) Continuing education is required to maintain a UST Installer license; this consists of four hours of continuing education through a Commission-accredited program every two years.

(d) The Commission has the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any underground storage tank installer who is found guilty of:

(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.

(2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.

(3) Knowingly making false statements or signing false statements, certificates or affidavits to the Commission or to clients with the intention to induce payment.

(4) Aiding or assisting another person in violating any provision of this Chapter.

(5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the UST Installer.

(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.

(7) Failure to comply with this Chapter, Chapters 26, 27, 29 and the Oklahoma Petroleum Storage Tank Regulation Act (17 O.S. § 301 et seq.) Oklahoma Petroleum Storage Tank Release Indemnity Program will result in the Commission being authorized to seek a suspension and/or revocation of the UST Installer license.

(8) Being under indictment or convicted of any criminal offense.

(e) Prior to any license suspension, revocation, or refusal to renew, the Director of the Petroleum Storage Tank Division will have the matter investigated and a report made for his or her consideration. If the Director elects to pursue suspension, revocation, or refusal to renew, the Commission will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of proof is substantial evidence of violations of this Chapter, applicable state law, or incompetence and rests upon the Petroleum Storage Tank Division.

(f) This Section in no way exempts the UST Installer from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.

(g) UST Installers are not allowed to remove underground storage tanks and will be required to obtain a separate UST Remover license before they can remove underground storage tanks.

165:25-1-102. Licensing procedure for UST Removers

(a) Any individual who would like to become a licensed UST Remover must:

(1) Complete an OCC UST Remover application form.

(2) Provide sufficient proof of two years related work experience, completed within the last five years, with supervised active participation in the completion of at least three (3) removals. If applicant is a current UST remover license holder in another state, the work experience may be substituted for each confirmed year he or she held the license.

(3) Pass an examination administered by the Commission.

(4) Pay fees for applications, examinations, and licensing according to the schedule provided in OAC 165:5, the Commission's Rules of Practice.

(5) Certify that they will comply with all Commission rules and requirements for removal of underground storage tanks.

(b) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete will result in forfeiture of fees and will require a new application and appropriate fees.

(c) Continuing education is required to maintain a UST Removers license; this consists of four hours of continuing education through a Commission approved program every two years.

(d) The Commission has the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any underground storage tank remover who is found guilty of:

(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.

(2) Any gross negligence, incompetence or misconduct in removal work performed pursuant to this Chapter.

(3) Knowingly making false statements or signing false statements, certificates or affidavits to the Commission or to clients with the intention to induce payment.

(4) Aiding or assisting another person in violating any provision of this Chapter.

(5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the UST Remover.

(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.

(7) Failure to comply with this Chapter, Chapters 26, 27, 29, and the Oklahoma Petroleum Storage Tank Regulation Act (17 O.S. § 301 et seq.) will result in the Commission being authorized to seek a suspension and/or revocation of the UST Remover license.

(8) Being under indictment or convicted of any criminal offense.

(e) Prior to any license suspension, revocation, or refusal to renew, the Director of the Petroleum Storage Tank Division will have the matter investigated and a report made for his or her consideration. If the Director elects to proceed with suspension, revocation, or refusal to renew, a Notice of Intent will be mailed to the licensee. If the Director elects to pursue suspension, revocation, or refusal to renew, the Commission will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of clear and convincing proof of violations of this Chapter or applicable state law rests upon the Petroleum Storage Tank Division.

(f) This Section in no way exempts the UST Remover from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.

165:25-1-103. Licensing procedure for Monitoring Well Technician

(a) Monitoring of vapor and groundwater wells for the purpose of monthly release detection must be performed by an individual licensed by the OCC Petroleum Storage Tank Division (PSTD). An individual who applies to be licensed to perform monthly release detection of monitoring wells must:

(1) Complete an OCC Monitor Well Technician application form.

(2) Provide a copy of the manufacturer's instructions for the monitoring equipment that will be used and display his/her competence in the use of the monitoring equipment to the PSTD. The use of new or different monitoring equipment will require the user to submit the manufacturer's instructions and display his/her competence in the use of the new or different equipment.

(3) Certify that they will comply with all Commission rules and requirements.

(4) Fees must be paid in accordance with 165:5.

(b) A license to monitor vapor and groundwater monitoring wells for the purpose of monthly release detection must be renewed every two years.

(c) Individuals who are monitoring vapor and groundwater monitor wells for monthly release detection purposes must report readings that exceed the levels in 165:25-3-6.23 or 165:25-3-6.24 to the facility owner and/or operator within 48 hours.

(d) The Commission has the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any monitor well technician who is found guilty of:

(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.

(2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.

(3) Knowingly making false statements or signing false statements, certificates or affidavits to the Commission or to clients with the intention to induce payment.

(4) Aiding or assisting another person in violating any provision of this Chapter.

(5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the Monitor Well Technician.

(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.

(7) Failure to comply with this Chapter, Chapters 26, 27, 29, and the Oklahoma Petroleum Storage Tank Regulation Act (17 O.S. § 301 et seq.) Oklahoma Petroleum Storage Tank Release Indemnity Program will result in the Commission being authorized to seek a suspension and/or revocation of the UST Installer license.

(8) Being under indictment or convicted of any criminal offense.

(e) Prior to any license suspension, revocation, or refusal to renew, the Director of the Petroleum Storage Tank Division will have the matter investigated and a report made for his or her consideration. If the Director elects to proceed with suspension, revocation, or refusal to renew, a Notice of Intent will be mailed to the licensee. If the Director elects to pursue suspension, revocation, or refusal to renew, the Commission will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of clear and convincing proof of violations of this Chapter or applicable state law rests upon the Petroleum Storage Tank Division.

(f) This Section in no way exempts the Monitor Well Technician from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.

SUBCHAPTER 2. GENERAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS

PART 1. CODES AND STANDARDS

165:25-2-2. Incorporated codes and standards

Specific references to documents listed below are made throughout this Chapter. Each of these documents or part thereof is adopted and incorporated by reference as a standard. New editions of codes and standards supersede all previous editions.

(1) National Fire Protection Association Standards:

(A) Standard Number 30, 2003, "Flammable and Combustible Liquids Code".

(B) Standard Number 329, 1992, "Underground Leakage of Flammable and Combustible Liquids".

(C) Standard Number 385, 1990, "Tank Vehicles for Flammable and Combustible Liquids".

(D) Standard Number 321, 1991, "Basic Classification of Flammable and Combustible Liquids".

(E) Standard Number 327, 1993, "Cleaning or Safeguarding Small Tanks and Containers".

(F) Standard Number 30A, 2003, "Automotive and Marine Service Station Code".

(2) American Petroleum Institute Standards:

(A) Recommended Practice 1615, 1996, "Installation of Underground Petroleum Storage Systems".

(B) Recommended Practice 1632, 1996, "Cathodic Protection of Underground Storage Tank and Piping Systems".

(C) Recommended Practice 1604, 1987, "Removal and Disposal of Used Underground Service Station Tanks".

(D) Recommended Practice 1631, 1992, "Interior Lining of Underground Storage Tanks".

(E) Recommended Practice 1621, 1993, "Bulk Liquid Stock Control at Retail Outlets".

(F) Recommended Practice 1626, 1993, "Storing and Handling Ethanol and Gasoline - Ethanol Blends at Distribution Terminals and Service Stations".

(G) Recommended Practice 1627, 1993, "Storing and Handling of Gasoline - Methanol/Cosolvent Blends at Distribution Terminals and Service Stations".

(H) Publication 1628, 1996, "A Guide to the Assessment and Remediation of Underground Petroleum Releases".

(I) Publication 2200, 1994, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines".

(J) Publication 2015, 1994, "Cleaning Petroleum Storage Tanks".

(3) National Association of Corrosion Engineers:

(A) Standard Number RP-0169-92, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".

(B) Standard Number RP-0184-94, "Repair of Lining Systems".

(C) Standard Number RP-0285-95, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems".

(D) Standard Number RP-0286-86, "The Electric Isolation of Cathodically Protected Pipelines".

(4) Underwriter's Laboratory Standards:

(A) Standard UL58, 8th Edition, 1986, "Steel Underground Tanks for Flammable and Combustible Liquids".

(B) Standard UL1316, 2nd Edition, 1994, "Glass-Fiber- Reinforced Plastic Underground Storage Tanks for Petroleum Products".

(C) Standard UL1746, 2nd Edition, 1993, "External Corrosion Protection Systems for Steel Underground Storage Tanks".

(D) Standard UL567, 7th Edition, 1992, "Pipe Connectors for Flammable and Combustible Liquids and LP Gas".

(E) Standard UL971, 2005 "Nonmetallic Underground Piping for Flammable Liquids".

(5) American Society for Testing Materials:

(A) Standard D 4021-92, "Standard Specifications for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks".

(B) Standard ES 40-94 "Emergency Standard Practice for Alternative Procedures for the Assessment of Buried Steel Tanks Prior to the Addition of Cathodic Protection."

(C) Standard E 1739-95, "Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites".

(D) Standard G-158-98, Three Methods of Assessing Buried Steel Tanks".

(6) Petroleum Equipment Institute PEI/RP 100-2000, "Recommended Practices for Installation of Underground Liquid Storage Systems".

(7) Steel Tank Institute, STI-F894-91, "Specification for External Corrosion Protection of FRP Composite Underground Steel Storage Tanks".

(8) Association of Composite Tanks, ACT-100, "Specifications for the Fabrication of FRP Clad/Composite Underground Storage Tanks".

(9) Factory Mutual 1920, "Flexible Pipe Couplings".

(10) National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension, Existing Steel UST by Lining without Additional Cathodic Protection".

(11) National Groundwater Well Association, 1986, "RCRA Ground Water Monitoring Technical Enforcement Guidance Document (TEGD)".

(12) American Society for Testing and Materials, ASTM Designation: E 1739-95, "Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites".

(13) U.S. Environmental Protection Agency Office of Water, 1997, Drinking Water Advisory: "Consumer Acceptability Advice on Health Effects Analysis on Methyl Tertiary-Butyl Ether (MTBE)."

(14) Ken Wilcox Associates, Inc., First Edition: "Recommended Practice for Inspecting Buried Lined Steel Tanks Using a Video Camera."

165:25-2-4. Financial responsibility

(a) An owner or operator may satisfy the requirements of Title 40 Code of Federal Regulations (CFR), 280.90 through 280.111, in (b) above, by use of the Petroleum Storage Tank Indemnity Fund (Indemnity Fund) (ref: Okla. Stat. Tit. 17 §350 et seq.) (ref: Okla. Stat. Tit. 17 §350 et seq.). There is a $5,000 deductible for use of mechanisms and for which compliance may be demonstrated by use of any of the mechanisms outlined in 40 CFR 280.90 through 280.111, and OAC 165:27-2-1.11.

(b) Regulations promulgated on or before November 9, 1989 by the United States Environmental Protection Agency are hereby adopted as provisions of this Chapter as though set forth herein with the exception that, and unless the context otherwise dictates, all references therein to "Implementing Agency" shall be considered references to the "Oklahoma Corporation Commission," and all references to "Administrator," "Regional Administrator," "Director," or "State Director" shall be considered references to the "Director of the Petroleum Storage Tank Division of the Oklahoma Corporation Commission.

PART 3. DESIGN AND INSTALLATION

165:25-2-33. Approved tanks, tank design

The material used in the construction of a ~~new~~ UST must be compatible with the regulated substance to be stored in the UST. Tanks must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion as specified below:

(1) Fiberglass-reinforced plastic tanks must conform to the standards contained in UL 1316 or ASTM D4021-86.

(2) Steel tanks clad with fiberglass-reinforced plastic must conform to the standards contained in UL 1746 or ACT-100.

(3) Tanks constructed of steel and cathodically protected must conform to the standards in UL 1746 and NACE RP-0285 and must be protected in the following manner:

(A) The tank must be coated with a suitable dielectric material.

(B) Field-installed cathodic protection systems must be designed by a corrosion expert.

(C) Impressed current systems must be designed to allow determination of current operating status as required by this Chapter and manufacturer's specifications.

(D) Cathodic protection systems must be operated and maintained according to this Chapter and manufacturer's specifications.

(4) The Commission may permit alternative types of tank construction, design, and corrosion protection if the owner demonstrates to the Commission's satisfaction that the alternative construction, design, and corrosion protection system will prevent the release of any stored regulated substance in a manner no less protective of human health and the environment than those set out in this Section.

165:25-2-39. Spill and overfill protection

(a) Underground storage tanks must have spill and overfill protection on the tanks.

(b) Owners and operators of ~~aboveground~~ underground storage tank systems, as well as those who transport regulated substances to these systems must do everything reasonably possible to ensure that releases due to spilling and overfilling do not occur.

(c) Tight fill connections must be used on all deliveries made to underground storage tanks.

(d) Tampering with overfill protection is not permitted. Any violation of this Section will be subject to the enforcement procedures of this Chapter and any other fines or contempt proceedings as provided by law.

(e) Except as provided in (f) of this Section, in order to prevent spilling and overfilling associated with product transfer to the petroleum storage tank system, the following prevention equipment must be used:

(1) Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill bucket or a drain system).

(2) Overfill prevention equipment that will automatically shut off flow into the tank when the tank is no more than 95 percent full. A drop tube with overfill device is required on all tank systems installed after July 1, 2001. Tanks installed before July 1, 2001, must be upgraded to

meet these standards before July 1, 2002, unless documentation can be provided at the time of inspection for compliance that proves the petroleum storage tank system is equipped with a ball float overfill device.

(f) The spill and overfill prevention equipment specified in (e) of this Section is not required if:

(1) The underground storage tank system is filled by transfers of no more than 25 gallons at one time; or

(2) Alternative equipment is used that is determined by the Commission to be no less protective of human health and the environment than the equipment specified in (a) of this Section.

165:25-2-40. ~~Tank system~~ Installation testing

(a) All tanks must be tested with air pressure prior to installation, and/or tested according to manufacturer's specifications. Pressure must not exceed 5 pounds per square inch (psi). The entire tank must be soaped during this period and inspected for bubbling.

(b) All suction piping must be tested while disconnected from the tank, pumps, and dispensing units. The piping must be subjected to an air test with the following specifications:

(1) The piping must be subjected to an air test of at least 50 psi.

~~(2) The test must have a duration time of not less than 60 minutes.~~

(~~3~~2) All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks.

(~~4~~3) As an alternative to the preceding methods in ~~(1), (2,) and (3)~~ (1) and (2) above, the piping may be subjected to a vacuum test while connected to tanks, pumps and dispensing units.

(c) Pressurized piping must be tested while connected to tanks, pumps and dispensing units and must be subjected to an air test of at least 50 psi.

(d) Tightness (also called precision) tests for tanks and piping must be performed after all paving over the tanks and piping has been completed and before the system is placed in operation, and must be performed in accordance with the applicable requirements of this Chapter.

(1) A precision tightness test must be performed by a certified tester, and in accordance with manufacturer's instructions; or

(2) The following alternative to a precision tightness test will be accepted, but only if conducted before the system is put into service:

(A) The tank must be filled to at least 80 percent capacity.

(B) A certified automatic tank gauge capable of detecting a leak of 0.10 gallons per hour must be used to test the filled portion of the tank.

(3) The product line(s) must be hydrostatically tested by a nationally recognized testing device capable of detecting a leak of 0.10 gallons per hour with a test pressure of 50 psi or $1\frac{1}{2}$ times the operating pressure, whichever is greater. The lines must be tested for a minimum of one hour.

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

(5) If an ATG system with electronic line leak detector(s) is installed, it must complete a leak detector test in each of the modes in which it is certified as capable of detecting a leak (e.g. 3 gph, 0.2 gph and 0.1 gph).

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

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

165:25-2-42. Certification of installation

(a) Owners of underground storage tank systems must ensure that the installer has been ~~certified~~ licensed by the Commission in accordance with this Chapter.

(b) There must be a Commission-licensed UST Installer who has the authority to assure that UST systems are installed in accordance with this Chapter in supervisory control, present at the job site during UST systems installation.

(c) The OCC Tank Registration Form must be signed by the tank owner and the installation certified by the OCC licensed Installer.

PART 5. PROTECTION AGAINST CORROSION

165:25-2-51. Corrosion protection

(a) Any portion of a metallic tank or piping system in contact with the soil must be protected from corrosion. A cathodic protection system must be engineered by a corrosion expert, installed and maintained in accordance with recognized standards of design, such as:

(1) American Petroleum Institute Publication 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;

(2) Underwriters Laboratories of Canada ULC-S603.1 M, Standard for Galvanic Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids;

(3) ~~Steel Tank Institute Standard No. Sti-P3®, Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks;~~ Steel Tank Institute:

(A) Standard No. Sti-P3®, Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks;

(B) STI R-892-91, "Recommended Practice for Corrosion Protection of Underground Piping Networks Associated with Liquid Storage and Dispensing Systems".

(C) STI R-894-91, "Specification for External Corrosion Practices for Installation of FRP Composite Underground Steel Storage Systems".

(D) STI R-972-01, "Recommended Practice for Addition of Supplemental Anodes to sti-P3 USTs".

(4) National Association of Corrosion Engineers Standard RP-01-69 (1996 rev.), Recommended Practice,

Control of External Corrosion of Underground or Submerged Metallic Piping Systems;

(5) National Association of Corrosion Engineers ("NACE") Standard RP-02-85-95, Recommended Practice, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems; and

(6) Underwriters Laboratories Inc., ("UL") Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks, UL 1746, Part 1.

(b) Approved or listed corrosion-resistant materials or systems include special alloys, fiberglass reinforced plastic, or fiberglass reinforced plastic coatings.

165:25-2-53.1. Underground storage tank internal lining requirements

(a) A previously lined steel tank that fails precision tightness testing may not be repaired and must be removed.

(b) Tank lining may not be used as a method of repair for an unlined leaking tank, (bare steel or cathodically protected).

(c) Within 10 years after lining, and every five years thereafter, lined USTs must be internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

(d) Standards that must be referenced during the periodic inspection of lined USTs:

(1) American Petroleum Institute (API) Publication 1631.

(2) Ken Wilcox Associates, Inc. "Recommended Practices for Inspecting Buried Lined Steel Tanks Using a Video Camera," First Edition, 1999, Methods A and D.

(3) National Leak Prevention Association Standard 631.

(e) UST owners must submit to the OCC a copy of the certificate of performance (Interior Lining Inspection Form) completed by the inspection provider attesting that the UST meets the performance requirements for both the UST and the lining material. Any UST failing to meet the specified performance requirements must be repaired and upgraded with a cathodic protection system within six months of the lining repair, or be removed. Suitability of the tanks for upgrade by adding cathodic protection must be determined prior to application.

(f) USTs upgraded by the addition of both internal lining and cathodic protection do not require internal periodic inspection if the cathodic protection system has been properly installed and maintained on the UST system.

(g) Tank owners or their representative must provide 48 hour notification for all lining procedures to the OCC.

165:25-2-54. Underground storage tank piping materials [AMENDED AND RENUMBERED TO 165:25-2-55.1]

~~(a) All underground pressurized piping installed at new facilities must be as follows:~~

~~(1) Nonmetallic;~~

~~(2) Double-walled;~~

~~(3) A tracer locator wire must be installed in all piping trenches; and~~

~~(4) Tank and dispenser sumps must be installed, and they must be monitored per 165:25-3-6.~~

~~(b) All new suction piping meeting the requirements of 165:25-3-6(2)(A) through (D) must be installed as follows:~~

~~(1) Nonmetallic;~~

~~(2) May be either single- or double-walled;~~

~~(3) A tracer locator wire must be installed in all piping trenches; and~~

~~(4) Dispenser sumps must be installed and monitored by a sensor, float or similar mechanical device at each sump.~~

~~(c) All new suction piping not meeting the requirements of 165:25-3-6(2)(A) through (D) must be double walled and a sump must be installed at each dispenser and at the tank and must be monitored by a sensor, float or similar mechanical device at each sump.~~

~~(d) Existing facilities that are replacing metallic piping must upgraded pursuant to (a) or (b) of this Section. If the metallic line fails due to corrosion, the line must be immediately removed, and cannot be reused.~~

~~(e) Existing facilities that have metallic or single walled nonmetallic piping and are removing, replacing, relocating or adding a fuel island must install dispenser sumps and monitor as pursuant 165:25-3-6. Any additions to the metallic piping must be nonmetallic single or double-walled piping.~~

~~(f) Existing facilities that are replacing dispensers where the fuel islands are not being removed, replaced, relocated, or added may add to the existing piping using the same piping material, and dispenser sumps do not have to be installed.~~

~~(g) Existing facilities that are replacing underground storage tanks may re-use single walled nonmetallic piping. Tank sumps must be installed, and they must be monitored as pursuant 165:25-3-6.~~

~~(h) Existing facilities that are replacing underground storage tanks must replace all metallic piping per (a) or (b) of this section.~~

165:25-2-55. Underground storage tank internal lining requirements [REVOKED]

~~(a) A lined steel tank that fails precision tightness testing may not be repaired and must be removed.~~

~~(b) Within 10 years after lining, and every five years thereafter, lined USTs must be internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.~~

~~(c) Standards that must be referenced during the periodic inspection of lined USTs:~~

~~(1) American Petroleum Institute (API) Publication 1631.~~

~~(2) Ken Wilcox Associates, Inc. "Recommended Practices for Inspecting Buried Lined Steel Tanks Using a Video Camera, First Edition, 1999, Methods A and D.~~

~~(d) UST owners must obtain a certificate of performance (Interior Lining Inspection Form) from the inspection provider attesting that the UST meets the performance requirements for~~

~~the UST and lining material. Any UST failing to meet the performance requirements must be repaired and upgraded with a cathodic protection system within six months of the lining repair, or be removed. Suitability of the tanks for upgrade by adding cathodic protection must be determined prior to application.~~

~~(e) USTs upgraded by the addition of both internal lining and cathodic protection do not require internal periodic inspection if the cathodic protection system has been properly installed and maintained on the UST system.~~

PART 6. PIPING

165:25-2-55.1. Underground storage tank piping materials

(a) All underground pressurized piping installed at new facilities must be as follows:

(1) Nonmetallic;

(2) Double-walled;

(3) A tracer locator wire must be installed in all piping trenches; and

(4) Tank and dispenser sumps must be installed, and they must be monitored per 165:25-3-6.29.

(b) All new suction product piping must meet the requirements of 165:25-3-6.29 as follows:

(1) Nonmetallic;

(2) May be either single- or double-walled;

(3) A tracer locator wire must be installed in all piping trenches; and

(4) Dispenser sumps must be installed and monitored by a sensor, float or similar mechanical device at each sump.

(c) Existing facilities that are replacing metallic piping must upgrade pursuant to (a) or (b) of this Section. If the metallic line fails due to corrosion, the entire product line must be immediately removed, and cannot be repaired.

(d) Existing facilities that have metallic or single-walled nonmetallic piping and are removing, replacing, relocating or adding a fuel island must install dispenser sumps and monitor as pursuant 165:25-3-6.29. Any additions to the metallic piping must be nonmetallic single or double-walled piping.

(e) Existing facilities that are replacing dispensers where the fuel islands are not being removed, replaced, relocated, or added may add to the existing piping using the same piping material, and dispenser sumps do not have to be installed.

(f) Existing facilities that are replacing underground storage tanks may re-use single-walled nonmetallic piping. Tank sumps must be installed, and they must be monitored as pursuant 165:25-3-6.

(g) Existing facilities that are replacing underground storage tanks must replace all metallic piping per (a) or (b) of this section.

PART 7. DISPENSERS

165:25-2-72. Dispenser hose

(a) Underwriters Laboratory (UL) Listed hose assemblies must be used to dispense fuel.

(1) Hose length at facilities must not exceed 18 feet (18', or 5.5 m).

(2) Hose at facilities must be checked daily for evidence of blistering, carcass saturation or separation, cuts, nicks or abrasions that expose reinforcement material and for slippage, misalignment or leaks at couplings. If present, hose must be removed from service immediately.

(3) Two lengths of hose must not be coupled together.

~~(b) Defective hoses must be removed from service.~~

(~~c~~b) At least once each month the hose must be completely extended and inspected.

(1) The hose couplings and the first twelve inches (12") of hose adjacent to the couplings must be examined for structural weakness.

(2) Structural weakness must be checked by pressing the hose in the area around its entire circumference for soft spots.

(3) Hoses that show evidence of soft spots must be removed immediately.

165:25-2-77. Electrical equipment [AMENDED AND RENUMBERED TO 165:25-2-91]

~~(a) All electrical work must be installed by a state or federally licensed electrical contractor.~~

~~(b) All electrical wiring and electrical utilization equipment must be of a type specified by and must be installed in accordance with NFPA 70, National Electrical Code.~~

~~(c) All electrical wiring and electrical utilization equipment must be suitable for the locations in which they are installed.~~

~~(d) NFPA 30A regulations should be used to delineate and classify areas for the purpose of installation of electrical wiring and electrical utilization equipment. The designation of classes and divisions of classified locations is defined in Chapter 5, Article 500, of NFPA 70, National Electrical Code.~~

~~(e) Electrical wiring and electrical utilization equipment integral to the dispensing hose or nozzle must be suitable for use in Class I, Division 1 classified locations.~~

~~(f) Where Class I liquids are stored, handled, or dispensed, electrical wiring and electrical utilization equipment must be designed and installed in accordance with the requirements for Class I Division 1 or 2 classified locations, set forth in NFPA 70, National Electrical Code.~~

~~(g) Clearly identified and easily accessible switch(es) or circuit breaker(s) must be provided at a location remote from dispensing devices, including remote pumping systems, to shut off the power to all dispensing devices in the event of an emergency.~~

~~(h) Electrical components for dispensing liquids must be installed according to the guidelines established in Electrical Installations of NFPA 30A. All electrical equipment must be installed and used in accordance with the requirements of NFPA 70, National Electrical Code, as it applies to wet, damp, and hazardous locations.~~

~~(i) Electrical equipment that was installed in compliance with a state or national code in existence before July 15, 2002~~

~~will not be required to change unless the equipment is hazardous to people or property.~~

PART 9. ELECTRICAL

165:25-2-91. Electrical requirements

(a) All electrical work must be installed by a state or federally licensed electrical contractor.

(b) All electrical wiring and electrical utilization equipment must be of a type specified by and must be installed in accordance with NFPA 70, National Electrical Code.

(c) All electrical wiring and electrical utilization equipment must be suitable for the locations in which they are installed.

(d) NFPA 30A regulations should be used to delineate and classify areas for the purpose of installation of electrical wiring and electrical utilization equipment. The designation of classes and divisions of classified locations is defined in Chapter 5, Article 500, of NFPA 70, National Electrical Code.

(e) Electrical wiring and electrical utilization equipment integral to the dispensing hose or nozzle must be suitable for use in Class I, Division 1 classified locations.

(f) Where Class I liquids are stored, handled, or dispensed, electrical wiring and electrical utilization equipment must be designed and installed in accordance with the requirements for Class I Division 1 or 2 classified locations, set forth in NFPA 70, National Electrical Code.

(g) Clearly identified and easily accessible switch(es) or circuit breaker(s) must be provided at a location remote from dispensing devices, including remote pumping systems, to shut off the power to all dispensing devices in the event of an emergency.

(h) Electrical components for dispensing liquids must be installed according to the guidelines established in Electrical Installations of NFPA 30A. All electrical equipment must be installed and used in accordance with the requirements of NFPA 70, National Electrical Code, as it applies to wet, damp, and hazardous locations.

(i) Electrical equipment that was installed in compliance with an earlier state or national code will not require modification unless the equipment is hazardous to people or property.

PART 11. REPAIRS TO UNDERGROUND STORAGE TANK SYSTEMS

165:25-2-111. Repairs to underground storage tank systems

(a) Repairs to underground storage tank systems must prevent releases due to structural failure or corrosion for the remaining operational life of the system.

(b) Repairs shall be conducted by qualified personnel possessing the appropriate skills, experience, competence, and any required license or certification to complete the work in accordance with provisions of this Chapter.

(c) Any repair shall be properly conducted in accordance with a standard or code of practice developed by a nationally recognized association or independent testing laboratory.

(d) Requirements of this Section do not apply to routine and minor maintenance activities related to the tank and piping system.

(e) Following completion of repairs, a tightness test of the repaired structure, performed by a certified tester, is required prior to returning it to service.

PART 13. REMOVAL AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS

165:25-2-131. Tank removal and closure

(a) Owners and Operators of all underground storage tank systems must notify the Petroleum Storage Tank Division at least 14 days prior to the removal or permanent closure of underground storage tanks and/or lines. If events require a change in the date of removal, the Division shall be given 48 hours notice of the new date.

(b) An authorized agent of the Commission may be present to observe the removal and to inspect the closed tank system and the surrounding environment prior to backfilling.

(c) Tanks and lines must be removed upon closure unless the Commission grants a variance that allows the tanks to be closed in place by filling.

(d) All underground storage tanks must be removed by a licensed UST Remover.

(e) Any company that removes underground storage tank systems must have a licensed UST Remover on the job site during removal.

165:25-2-132. Compliance with removal and closure requirements

Owners and/or operators of all underground storage tank systems that are temporarily taken out of service, permanently closed, or removed must comply with all the requirements of this Part.

165:25-2-133. Temporary removal from service

(a) When an underground storage tank system is taken temporarily out of service, the owner or operator must:

(1) Continue the operation and maintenance of corrosion protection as required by this Chapter;

(2) Continue release detection as required by this Chapter;

(3) Comply with the requirements of this Chapter concerning release reporting and corrective action; and

(4) Notify the Commission of a change in service on the prescribed form.

(b) Release detection is not required as long as the underground storage tank system is empty. For the purposes of this Subchapter, the underground storage tank system is empty when all materials have been removed using commonly employed practices so that no more than 1 inch (1") of residue remains in the tank.

165:25-2-134. Temporary closure; requirements for returning to service

(a) When an underground storage tank system is taken out of service for 3 months or more, but less than 12 months, the owner or operator must comply with the requirements of 165:25-2-133 and meet the following additional requirements:

(1) All tanks must be drained.

(2) All vent lines must be left open and functioning.

(3) All other lines, pumps, manways, and ancillary equipment must be capped and secured.

(b) When an underground storage tank system is returned to service a tank and line tightness test, performed by a certified tester, must be completed on the underground portion of temporarily closed systems prior to returning the system to service if it has been out of service for more than 12 months.

165:25-2-135. Permanent closure

(a) Systems out of service for more than 12 months must be removed if they do not comply with the requirements for release detection and corrosion protection as stated in 25-2-134.

(b) All permanent tank closures must be performed by a licensed UST Remover.

(c) All permanent tank closures must be completed by removing the tank(s) and lines from the ground, unless the Commission grants a variance of this requirement. A variance will only be granted by application, notice and hearing. The burden of proof rests on the person seeking a variance.

165:25-2-136. Assessing the site at closure or change in service

(a) Before permanent closure, or a change in service, or tank or line repair and/or replacement is completed, the owner must measure for the presence of a release where contamination is most likely to be present at the underground storage tank system site. The Commission, at its discretion, may have a witness present to verify that sampling is completed appropriately. Failure of the owner or the owner's representative to schedule the sampling 14 days in advance with the PSTD and to advise PSTD at least 48 hours in advance of schedule changes, will result in the PSTD requiring a post-closure site assessment, and Commission initiated enforcement.

(b) In selecting sample types, sample locations, and measurement methods, the owner must consider the method of closure, the nature of the stored substance, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence of a release. Please refer to the OCC removal guidance document relating to UST closure sampling. Sample locations should be outside of the UST system in native soil or another location approved by the Commission. All samples required to be collected and analyzed pursuant to this Section must be analyzed by an Oklahoma Department of Environmental Quality certified laboratory.

(1) For tank systems containing petroleum product, analyses must be done for both TPH and BTEX.

(2) Levels of contamination in native soils and groundwater that shall require further action, at the direction of the commission, are:

(A) Benzene

(i) Native Soils - 0.5 mg/kg

(ii) Groundwater - 0.005 mg/l

(B) Toluene

(i) Native Soils - 40.0 mg/kg

(ii) Groundwater - 1.0 mg/l

(C) Ethyl Benzene

(i) Native Soils - 15.0 mg/kg

(ii) Groundwater - 0.7 mg/l

(D) Xylene

(i) Native Soils - 200.0 mg/kg

(ii) Groundwater - 10.0 mg/l

(E) TPH

(i) Native Soils - 50.0 mg/kg

(ii) Groundwater - 2.0 mg/l

(iii) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case at the direction of the commission.

(c) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered, the owner must begin corrective action in accordance with OAC 165:29, the Commission's Rules on Remediation.

(d) All sampling at closures must be under the supervision of a Licensed Remediation Consultant.

(e) Only soil and/or groundwater sampling results will be acceptable for site assessment at closure. Monitoring well records and/or inventory reconciliation records will not be accepted.

165:25-2-137. Applicability to previously closed underground storage tank systems

(a) When directed by the Commission, the owner of an underground storage tank system closed before April 21, 1989 must assess the excavation zone and close the underground storage tank system in accordance with this Chapter. The Commission may direct the owner to assess the site or may assess the site itself if releases from the underground storage tank system may, in the judgment of the Commission, pose a current or potential threat to human health, safety or welfare or the environment.

(b) Petroleum storage tank systems closed after April 21, 1989 and not upgraded to meet December 23, 1998 upgrade deadline must assess the site in accordance with 165:25-2-115.

165:25-2-138. Closure records

Owners and operators must maintain records that demonstrate compliance with all tank closure requirements. Records of the results of the required site assessments must be maintained for at least three (3) years after completion of permanent closure or change in service in one of the following ways:

(1) By the owner or operator who took the UST system out of service.

(2) By the current owner or operator of the UST system site.

(3) Mailing these records to the Petroleum Storage Tank Division if they cannot be maintained at the closed facility.

SUBCHAPTER 3. RELEASE PREVENTION AND DETECTION REQUIREMENTS

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

165:25-3-5. General monitoring requirements [AMENDED AND RENUMBERED TO 165:25-3-6.20]

~~Tanks must be monitored at least every 30 days for releases using one of the methods or combinations of methods listed in this Chapter, except that:~~

~~(1) Underground storage tanks that meet the performance standards and monthly inventory requirements of this Chapter may use tank tightness testing, performed by a certified tester, at least every 5 years and only until 10 years after the tank is installed or upgraded in accordance with this Chapter, whichever is later.~~

~~(2) Underground storage tanks with a capacity of 1,000 gallons or less may use weekly tank gauging.~~

165:25-3-5.1. General release detection methods and devices [RENUMBERED TO 165:25-3-6.21]

~~(a) Owners and operators of new and existing underground storage tank systems must use a release detection method, or a combination of release detection methods, that is:~~

~~(1) Capable of detecting a release of regulated substances from any portion of the underground storage tank system that routinely contains product.~~

~~(2) Designed, installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running conditions.~~

~~(3) Capable of meeting the performance requirements of this Chapter, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer.~~

~~(4) Sampled, tested, or checked for a release at least once every 30 days.~~

~~(b) If one of the external release detection methods in this Chapter is used, the owner of a new underground storage tank system must perform a necessary investigation to ensure proper operation of the release detection method.~~

~~(c) Owners and operators of all new underground storage tank systems must use one of the release detection methods, or a combination of methods, set forth in this Chapter. The owner or operator must notify the Commission in writing, at least 30 days after bringing a new system into operation, of the type of release detection method or combination of methods used at the new facility.~~

~~(d) Owners and/or operators must keep all written manufacturer and installer performance specifications and the manner in which those specifications are determined.~~

165:25-3-5.2. Tank system tightness testing with inventory control [AMENDED AND RENUMBERED TO 165:25-3-6.22]

~~When performed in accordance with the following requirements, this combination of functions is a stand alone method of leak detection for tanks.~~

~~(1) Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1gallon per hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.~~

~~(2) Requirements for tank tightness testing. If tank tightness testing is part of the chosen method of release detection, it must be conducted in accordance with the requirements of this Subchapter, and performed by a certified tester.~~

~~(3) Inventory control.~~

~~(A) Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:~~

~~(i) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank are recorded each operating day.~~

~~(ii) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").~~

~~(iii) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.~~

~~(iv) Deliveries are made through a drop tube that extends to within 6 inches (6") of the tank bottom.~~

~~(v) Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.~~

~~(vi) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth inch (1/8") at least once a month.~~

~~(B) Compliance with API 1621, where applicable, will be deemed compliance with this Section.~~

~~(4) Manual tank gauging. Manual tank gauging must be done within the following restrictions and must meet the following requirements:~~

~~(A) Restrictions. Manual tank gauging may be used as an approved method of release detection if:~~

~~(i) The tank has a nominal capacity of 1,000 gallons or less;~~

~~(ii) The tank has a nominal capacity of between 1,001 and 2,000 gallons and manual tank gauging is combined with periodic tank tightness testing as required by this Subchapter;~~

~~(B) Requirements.~~

~~(i) Tank liquid level measurements are taken at the beginning and ending of the period appearing in Appendix Q, during which no liquid is added to or removed from the tank.~~

~~(ii) Level measurements are based on an average of 2 consecutive stick readings at both the beginning and ending of the period.~~

~~(iii) The equipment used is capable of measuring the product over the full range of the tank's height to the nearest one-eighth inch (1/8").~~

~~(iv) A leak is suspected and subject to the release reporting requirements of Subchapter 3, Part 1 of this Chapter if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the table in Appendix Q.~~

165:25-3-5.3. Testing or monitoring for vapors [AMENDED AND RENUMBERED TO 165:25-3-6.23]

~~(a) Before installing a new vapor monitoring system or continuing to use an existing vapor monitoring system for monthly release detection a site specific site assessment must be conducted to determine the following:~~

~~(1) The exact location and total depth of the tank(s) and piping to avoid damage to the UST system during well installation and to determine the number and placement of wells.~~

~~(2) That the backfill is sufficiently porous to allow diffusion of vapors from a release to migrate readily to the monitoring wells (i.e., sand, pea gravel or crushed rock).~~

~~(3) That background levels of contamination or naturally occurring organic hydrocarbons are low enough to allow a release from the tank(s) or piping to be detected. To determine background concentrations, a temporary vapor well can be installed in the UST excavation area and the device that will be used for monitoring can be used to get an initial reading.~~

~~(4) The location and historical levels of groundwater at the site. If the backfill is saturated with water, because of a perched water table, fluctuating water table, rainfall, etc., a vapor monitoring system should not be used because dispersion of vapors would be restricted and a release could go undetected.~~

~~(5) Volatility of the stored product and its compatibility with the monitoring device that will be used.~~

~~(b) Individuals performing this site assessment must be a Commission Licensed Remediation Consultant.~~

~~(c) The vapor monitoring wells must be installed within the tank excavation and/or piping trench backfill. . A minimum of 2 wells is recommended for multi-tank excavations. Wells must be spaced to cover a maximum 20-foot radius. One well may be acceptable for single tanks of 3,000 gallons or less capacity, or for not more than 2-2,000 gallon tanks in one excavation provided the well is near the center of the excavation.~~

~~(d) In piping trenches, vapor monitoring wells must be placed at all piping joints and where piping changes direction, and be spaced to cover a maximum 20-foot radius of influence. A well must also be placed at each dispenser island, in backfill material and in a location least likely to be impacted by a surface spill caused by vehicle overfilling.~~

~~(e) Monitoring wells must be installed in accordance with OAC 785:35, Oklahoma Water Resources Board (OWRB), Well Driller and Pump Installer Licensing. OWRB rules allow an OCC licensed UST Installer to install monitoring wells during tank installations only. An OWRB licensed driller must perform all other well installations.~~

~~(f) In addition to 165:25-3-5.3(e), vapor monitoring wells must meet these minimum requirements:~~

~~(1) Be constructed from two- or four-inch polyvinyl chloride (PVC) or stainless steel casing with factory milled 0.01-inch well screen.~~

~~(2) The well screen section should begin approximately two feet below ground surface (bgs) for tank excavations and one foot bgs for piping trenches. The well screen must extend to a depth of two feet below the tank bottom and/or piping.~~

~~(3) A filter pack of graded gravel or uncontaminated quartz sand, silica, or other material that will not affect the groundwater quality must be placed around the entire length of the well screen.~~

~~(4) The area above the well screen must be sealed (annular seal) to prevent surface spills from contaminating the well, which would result in a false indication of a release. An anti-shrink concrete or grout seal must extend at least 12 inches from within the monitoring well manhole. The remainder of the well above the well screen must be sealed with a cement-bentonite mixture or bentonite pellets.~~

~~(5) A concrete or cement surface pad must be installed around the casing at the surface with minimum dimensions of 3 feet in diameter by 3.5 inches thick. The surface pad must be sloped so to ensure that all surface water flows away from the well. The surface pad is not required if the well is completed in competent concrete or asphalt paving.~~

~~(6) The well(s) must be installed within manholes competent to withstand anticipated traffic flow. The well casing must be secured with a tight fitting cap and the manhole cover bolted to prevent unauthorized tampering. The manhole cover must be clearly marked with an equilateral triangle to identify the well as a monitoring well or site assessment observation well.~~

~~(g) Records demonstrating compliance with this Section must be submitted to the Petroleum Storage Tank Division before a new vapor monitoring system may be used or before an existing vapor monitoring system may continue to be used after July 15, 2005. At a minimum, these records must include a site map that includes the location of tanks, piping, dispensers and all monitoring wells, copies of the OWRB Multi-Purpose Completion Report for each well, name of the company and individual performing the assessment.~~

~~(h) All vapor monitoring wells must be checked by a licensed monitoring well technician.~~

~~(i) The vapor monitoring equipment must be designed and operated to allow the threshold level to be preset specifically for the type of regulated substance stored in the tank system and be capable of detecting any significant increase in the concentration of regulated substance, component or components of that substance or a tracer placed in the tank system above background levels.~~

~~(j) Monitoring well readings above 4,000 units/ppm for gasoline and above 1,500 ppm for diesel, or above 1,500 units/ppm for a tank pit containing both gasoline and diesel tanks, must be reported to the Commission by telephone at (405) 521-6575 or toll free at 1-888-621-5878 within 24 hours of the owner or operator or any of his or her employees knowing the reading.~~

~~(k) An increase in vapor levels of 500 units/ppm above background or historical levels detected by monthly monitoring, even though below the 24 hour reporting level, must be reported if the increase does not correct itself in the second month of monitoring. The report must be made within 24 hours of the owner or operator or any of his or her employees knowing the second month's monitoring results.~~

~~(l) If a monitoring report under the circumstances above is not made within 24 hours, the owner or operator must be prepared to show documentation or evidence that would reasonably indicate his or her knowledge of monitoring results or release conditions was delayed.~~

165:25-3-5.4. Testing or monitoring for liquids on the groundwater [AMENDED AND RENUMBERED TO 165:25-3-6.24]

~~(a) Before installing a new groundwater monitoring system, or continuing to use an existing groundwater monitoring system for monthly release detection a site specific site assessment must be conducted to determine the following:~~

~~(1) The exact location and total depth of the tank(s) and piping to avoid damage to the UST system during well installation and to determine the number and placement of wells.~~

~~(2) That the backfill is sufficiently porous to allow migration of product from a release to the monitoring wells (i.e., sand, pea gravel or crushed rock).~~

~~(3) That background levels of contamination or naturally occurring organic hydrocarbons are low enough to allow a release from the tank(s) or piping to be detected. Groundwater monitoring may not be effective if the site has had prior spills or releases. If residual free product is discovered, it must be removed prior to initiating groundwater monitoring.~~

~~(4) The location and historical levels of groundwater at the site. Groundwater monitoring cannot be used if the water table is less than three feet below ground surface or more than 20 feet below ground surface.~~

~~(5) Fluctuation of groundwater. The well screen must intercept the water table at both high and low elevations. Free product floating on top of the water surface cannot enter a well if the water level is higher than the well screen, nor can free product enter a well if the water level is below the bottom of the well screen. It must be determined that groundwater conditions are such that a release would not go undetected.~~

~~(6) The stored product's compatibility with the monitoring device that will be used. The detection device must be able to detect the presence of at least one eighth of an inch of free product on top of the groundwater in the monitoring wells. Groundwater monitoring is only effective if the stored product is lighter than water (i.e., has a specific gravity less than 1.0), which allows the product to float on the water surface. The stored product must not be soluble in water. Products that are highly soluble in water would not be detected as a separate liquid phase.~~

~~(b) Individuals performing this site assessment must be Commission licensed remediation consultants.~~

~~(c) The groundwater monitoring wells must be installed in the tank excavation and/or piping trench backfill.~~

~~Two wells may be sufficient for single tanks of 3,000 gallons or less capacity or for not more than 2-2,000 gallon tanks in one excavation. For multiple tanks, a minimum of 3 wells must be installed with at least one of the wells placed on the downgradient side. A sufficient number of wells must be installed so that the entire UST system is covered. Under normal circumstances, groundwater monitoring on piping runs would not be appropriate due to the depth to groundwater and the time required to detect a leak.~~

~~(d) Monitoring wells must be installed in accordance with OAC 785:35, Oklahoma Water Resources Board (OWRB), Well Driller and Pump Installer Licensing. OWRB rules allow a Commission licensed UST Installer to install monitoring wells during tank installations only. An OWRB licensed driller must perform all other well installations.~~

~~(e) Groundwater monitoring wells must meet these minimum requirements:~~

~~(1) Be constructed from two- or four inch polyvinyl chloride (PVC) or stainless steel casing with factory milled 0.01 inch well screen.~~

~~(2) The well screen section should begin approximately two feet below ground surface (bgs) for tank excavations and one foot bgs for piping trenches. The well screen must extend to a depth of two feet below the tank bottom and/or piping.~~

~~(3) A filter pack of graded gravel or uncontaminated quartz sand, silica, or other material that will not affect the groundwater quality must be placed around the entire length of the well screen unless the tank and/or piping is backfilled with pea gravel.~~

~~(4) The well screen must terminate at least 18 inches below ground surface. The area above the well screen must be sealed (annular seal) to prevent surface spills from contaminating the well, which would result in a false indication of a release. An anti-shrink concrete or grout seal must extend at least 12 inches from within the monitoring well manhole. The remainder of the well above the well screen must be sealed with a cement-bentonite mixture or bentonite pellets.~~

~~(5) A concrete or cement surface pad must be installed around the casing at the surface with minimum dimensions of 3 feet in diameter by 3.5 inches thick. The surface pad must be sloped so to ensure that all surface water flows away from the well. The surface pad is not required if the well is completed in competent concrete or asphalt paving.~~

~~(6) The well(s) must be installed within manholes competent to withstand the anticipated traffic flow. The well casing must be secured with a tight fitting cap and the manhole cover bolted to prevent unauthorized tampering. The manhole cover must be clearly marked with an equilateral triangle to identify the well as a monitoring well or site assessment observation well.~~

~~(f) Records demonstrating compliance with this Section must be submitted to the Petroleum Storage Tank Division before a new groundwater monitoring system may be used or before an existing groundwater monitoring system may continue to be used after July 15, 2005. At a minimum, these records must include a site map that includes the location of tanks, piping, dispensers and all monitoring wells, copies of the OWRB Multi-Purpose Completion Report for each well, name of the company and individual performing the assessment.~~

~~(1) Any indication of free product floating on the water table must be reported to the Commission by telephone at (405) 521-6575 within 24 hours of the owner or operator or any of his or her employees discovering the product.~~

~~(2) If a monitoring report under the circumstances of (g) (1) above is not made within 24 hours, the owner or operator must be prepared to show documentation or evidence that would reasonably indicate his or her knowledge of the existence of free product was delayed.~~

~~(g) All groundwater monitoring wells must be checked by a licensed monitoring well technician.~~

165:25-3-5.5. Interstitial monitoring [AMENDED AND RENUMBERED TO 165:25-3-6.25]

~~Interstitial monitoring between the underground storage tank system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product. It must meet one of the following requirements:~~

~~(1) For double walled underground storage tank systems, the sampling or testing method must detect a release through the inner wall in any portion of the tank that routinely contains product.~~

~~(2) For underground storage tank systems with a secondary barrier within the excavation zone, the sampling or testing method used must detect a release between the underground storage tank system and the secondary barrier.~~

~~(A) The secondary barrier around or beneath the underground storage tank system must consist of artificially constructed material that is sufficiently thick and impermeable (at least 1.0 X 10^{-6} cm/sec) to direct a release to the monitoring point and permit its detection.~~

~~(B) The barrier must be compatible with the regulated substance stored so that a release from the underground storage tank system will not cause a deterioration of the barrier, allowing a release to pass through undetected.~~

~~(C) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system.~~

~~(D) Groundwater, precipitation, or soil moisture must not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days.~~

~~(E) The site must be assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are specifically intended for use under such conditions.~~

~~(F) Monitoring wells must be clearly marked and secured to avoid unauthorized access and tampering.~~

~~(3) For tanks with an internally fitted liner, an automated device must be used that can detect a release between the inner wall of the tank and the liner. In addition, the liner must be compatible with the substance stored.~~

165:25-3-5.6. Automatic tank gauging systems [RENUMBERED TO 165:25-3-6.26]

~~(a) Automatic tank gauging systems (ATGs) that test for the loss of product must conduct an automatic product level monitor test at a minimum frequency of once every 30 days, and be capable of detecting at least a 0.2 gallon per hour leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.~~

~~(b) ATGs that cannot detect a 0.1 gallon per hour leak rate monthly or perform inventory reconciliation are required to have monthly inventory reconciliation done in conjunction with them.~~

~~(c) Automatic tank gauging systems (ATG's) must be third party certified for the size of tanks and for the quantity of tanks that are manifolded together. Only third party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), as evidenced by their posting on the NWGLDE Web Site, will be accepted (nwglde.org).~~

165:25-3-5.7. Manual tank gauging [AMENDED AND RENUMBERED TO 165:25-3-6.27]

~~Any underground storage tank with a capacity of 550 gallons or less, or tanks with a capacity of 551 to 1,000 gallons and that are either 48- or 64-inches in diameter, may use manual tank gauging as their sole method of release detection for the tank. Underground storage tanks with a capacity of 551 to 1,000 gallons that are other than 48- or 64-inches in diameter, and tanks with a capacity of 1,001 to 2,000 gallons, may use manual tank gauging in combination with a periodic tank tightness test (every five years) for a period of 10 years from the date of installation or tank upgrade.~~

165:25-3-6. Monitoring requirements for piping [AMENDED AND RENUMBERED TO 165:25-3-6.29]

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

~~(1) Pressurized piping.~~

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

~~(B) New installations and facilities replacing a piping system must have at least one sump sensor, float or similar mechanical device at each submersible pump, or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient.~~

~~(C) New installations and facilities replacing a piping system must have double walled piping. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.~~

~~(D) The underground pressure piping from the master dispenser to the satellite must be designed and installed so that the satellite piping is tested by the automatic line leak detector. An annual line tightness test is required on the satellite underground piping.~~

~~(2) Suction piping. Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every 3 years by a certified tester, or use a monthly monitoring method conducted in accordance with this Chapter. No release detection is required for suction piping designed and constructed to meet the following standards:~~

~~(A) The below grade piping operates at less than atmospheric pressure.~~

~~(B) The below grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.~~

~~(C) Only one check valve is included in each suction line.~~

~~(D) The check valve is located directly below and as close as is practical to the suction pump.~~

~~(3) Methods of release detection for pressurized piping. Each method of release detection for piping must be done in accordance with the following requirements.~~

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

~~(i) Methods which alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 psi line pressure within 1 hour.~~

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

~~(iii) Automatic line leak detectors installed on or after September 22, 1991 must be capable of detecting the leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.~~

~~(iv) A hydrostatic line tightness test must be done annually by a certified tester in accordance with this chapter.~~

~~(B) Sump sensors.~~

~~(i) Sump sensors, floats or similar mechanical devices at each dispenser and tank sump may be used in lieu of annual line tightness testing.~~

~~(ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.~~

~~(C) Electronic line leak detection. A certified electronic line leak detector may be used in lieu of an automatic mechanical line leak detector and annual tightness test only if:~~

~~(1) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and~~

~~(2) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and~~

~~(3) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, AND the system is tested annually, and if necessary, calibrated in accordance with manufacturer's specifications.~~

~~(D) Monthly vapor monitoring. Monthly vapor monitoring may be used in lieu of an annual line tightness test only if the vapor monitoring system is installed and monitored in accordance with 165:25-3-5.3 for vapor monitoring.~~

~~(E) Other methods applicable to tanks and lines. Any of the acceptable methods for tanks listed in Subchapter 3 of this Chapter (Vapor monitoring and interstitial monitoring for double-walled piping and tanks) may be used in lieu of annual line tightness testing if it is designed to detect a release from any portion of the underground piping that routinely contains regulated substances.~~

165:25-3-6.1. Commission-approved alternative methods [RENUMBERED TO 165:25-3-6.30]

~~(a) Any other type of release detection method, or combination of methods, may be used if:~~

~~(1) The method can detect a 0.2 gallon per hour leak rate or a release of 130 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or~~

~~(2) The owner can demonstrate that the method proposed can detect a release as effectively as any of the methods allowed in this Subchapter. In comparing methods, the Commission will consider the size of release that the method can detect and the frequency and reliability with which it can be detected.~~

~~(b) The Commission may impose additional conditions on the use of any alternative methods as it deems necessary to protect the public health and safety and the environment.~~

PART 2. RELEASE DETECTION REQUIREMENTS AND METHODS

165:25-3-6.20. General monitoring requirements

Tanks must be monitored at least every 30 days for releases using one of the methods or combinations of methods listed in this Chapter. Underground storage tanks that meet the performance standards and monthly inventory requirements may use tank tightness testing, performed by a certified tester, at least once every 5 years and only until 10 years after the tank is installed or upgraded with corrosion protection, whichever is later.

165:25-3-6.21. General release detection methods and devices

(a) Owners and operators of new and existing underground storage tank systems must use a release detection method, or a combination of release detection methods, that is:

(1) Capable of detecting a release of regulated substances from any portion of the underground storage tank system that routinely contains product.

(2) Designed, installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running conditions.

(3) Capable of meeting the performance requirements of this Chapter, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer.

(4) Sampled, tested, or checked for a release at least once every 30 days.

(b) If one of the external release detection methods in this Chapter is used, the owner of a new underground storage tank system must perform a necessary investigation to ensure proper operation of the release detection method.

(c) Owners and operators of all new underground storage tank systems must use one of the release detection methods, or a combination of methods, set forth in this Chapter. The owner or operator must notify the Commission in writing, at least 30 days after bringing a new system into operation, of the type of release detection method or combination of methods used at the new facility.

(d) Owners and/or operators must keep all written manufacturer and installer performance specifications and the manner in which those specifications are determined.

165:25-3-6.22. Tank system tightness testing with monthly inventory control

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.

(1) **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.

(2) **Requirements for tank tightness testing.** If tank tightness testing is part of the chosen method of release detection, it must be conducted in accordance with the requirements of this Subchapter, performed by a tester certified by the manufacturer of the testing equipment, and completed once every five years.

(3) **Inventory control.**

(A) Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(i) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank are recorded each operating day.

(ii) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(iii) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(iv) Deliveries are made through a drop tube that extends to within 6 inches (6") of the tank bottom.

(v) Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.

(vi) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth inch (1/8") at least once a month.

(vii) Use of OCC Monthly Inventory Reconciliation Form or an electronic equivalent is required.

(B) Compliance with API 1621, where applicable, will be deemed compliance with this Section.

165:25-3-6.23. Testing or monitoring for vapors

(a) Before installing a new vapor monitoring system or continuing to use an existing vapor monitoring system for monthly release detection a site-specific site assessment must be conducted to determine the following:

(1) The exact location and total depth of the tank(s) and piping to avoid damage to the UST system during well installation and to determine the number and placement of wells.

(2) That the backfill is sufficiently porous to allow diffusion of vapors from a release to migrate readily to the monitoring wells (i.e., sand, pea gravel or crushed rock).

(3) That background levels of contamination or naturally occurring organic hydrocarbons are low enough to allow a release from the tank(s) or piping to be detected. To determine background concentrations, a temporary vapor well can be installed in the UST excavation area and the device that will be used for monitoring can be used to get an initial reading.

(4) The location and historical levels of groundwater at the site. If the backfill is saturated with water, because of a perched water table, fluctuating water table, rainfall, etc. above the tank burial depth, a vapor monitoring system should not be used because dispersion of vapors would be restricted and a release could go undetected.

(5) Volatility of the stored product and its compatibility with the monitoring device that will be used.

(b) Individuals performing this site assessment must be a Commission licensed remediation consultant.

(c) The vapor monitoring wells must be installed within the tank excavation and/or piping trench backfill. A minimum of 2 wells is required for multi-tank excavations, with at least one of the wells on the downgradient side. Wells must be spaced to cover a maximum 20-foot radius. One well is acceptable for single tanks of 3,000 gallons or less capacity, or for not more than 2-2,000 gallon tanks in one excavation provided the well is near the center of the excavation.

(d) In piping trenches, vapor monitoring wells must be placed at all piping joints and where piping changes direction, and be spaced to cover a maximum 20-foot radius of influence. A well must also be placed at each dispenser island, in backfill material and in a location least likely to be impacted by a surface spill caused by vehicle overfilling.

(e) Monitoring wells must be installed in accordance with OAC 785:35, Oklahoma Water Resources Board (OWRB), Well Driller and Pump Installer Licensing. OWRB rules allow an OCC-licensed UST Installer to install monitoring wells during tank installations only. An OWRB-licensed driller must perform all other well installations.

(f) In addition to 165:25-3-6.23(e), vapor monitoring wells must meet these minimum requirements:

(1) Be constructed from two- or four-inch polyvinyl chloride (PVC) or stainless steel casing with factory milled well screen.

(2) The well screen section should begin approximately two-feet below ground surface (bgs) for tank excavations and one-foot bgs for piping trenches. The well screen must extend to a depth of two feet below the tank bottom and/or piping.

(3) A filter pack of graded gravel or uncontaminated quartz sand, silica, or other material that will not affect the groundwater quality must be placed around the entire length of the well screen.

(4) The area above the well screen must be sealed (annular seal) to prevent surface spills from contaminating the well, which would result in a false indication of a release. An anti-shrink concrete or grout seal must extend at least 12 inches from within the monitoring well manhole. The remainder of the well above the well screen must be sealed with a cement-bentonite mixture or bentonite pellets.

(5) A concrete or cement surface pad must be installed around the casing at the surface with minimum dimensions of 3 feet in diameter by 3.5 inches thick. The surface pad must be sloped so to ensure that all surface water flows away from the well. The surface pad is not required if the well is completed in competent concrete or asphalt paving.

(6) The well(s) must be installed within manholes competent to withstand anticipated traffic flow. The well casing must be secured with a tight fitting cap and the manhole cover bolted to prevent unauthorized tampering. The manhole cover must be clearly marked with an equilateral triangle to identify the well as a monitoring well or site assessment observation well.

(g) Records demonstrating compliance with this Section must be submitted to the Petroleum Storage Tank Division before a new vapor monitoring system may be used or before an existing vapor monitoring system may continue to be used after July 15, 2005. At a minimum, these records must include a site map that includes the location of tanks, piping, dispensers and all monitoring wells, copies of the OWRB Multi-Purpose Completion Report for each well, name of the company and individual performing the assessment.

(h) All vapor monitoring wells must be checked by a licensed monitoring well technician.

(i) The vapor monitoring equipment must be designed and operated to allow the threshold level to be preset specifically for the type of regulated substance stored in the tank system and be capable of detecting any significant increase in the concentration of regulated substance, component or components of that substance (in a range of 0 to 10,000 units/ppm) or a tracer placed in the tank system above background levels.

(j) Monitoring well readings above 4,000 units/ppm for gasoline and above 1,500 units/ppm for diesel, or above 1,500 units/ppm for a tank pit containing both gasoline and diesel tanks, must be reported to the Commission by telephone at (405) 521-6575 or toll free at 1-888-621-5878 within 24 hours of the owner or operator or any of his or her employees knowing the reading.

(k) An increase in vapor levels of 500 units/ppm above background or historical levels detected by monthly monitoring, even though below the 24-hour reporting level, must be reported if the increase does not correct itself in the second month of monitoring. The report must be made within 24 hours of the owner or operator or any of his or her employees knowing the second month's monitoring results.

(l) If a monitoring report under the circumstances above is not made within 24 hours, the owner or operator must be prepared to show documentation or evidence that would reasonably indicate his or her knowledge of monitoring results or release conditions was delayed.

165:25-3-6.24. Testing or monitoring for liquids on the groundwater

(a) Before installing a new groundwater monitoring system, or continuing to use an existing groundwater monitoring system for monthly release detection a site-specific site assessment must be conducted to determine the following:

(1) The exact location and total depth of the tank(s) and piping to avoid damage to the UST system during well installation and to determine the number and placement of wells.

(2) That the backfill is sufficiently porous to allow migration of product from a release to the monitoring wells (i.e., sand, pea gravel or crushed rock).

(3) That background levels of contamination or naturally occurring organic hydrocarbons are low enough to allow a release from the tank(s) or piping to be detected. Groundwater monitoring may not be effective if the site has had prior spills or releases.

(4) The location and historical levels of groundwater at the site. Groundwater monitoring cannot be used if the water table is less than three feet below ground surface or more than 20 feet below ground surface.

(5) Fluctuation of groundwater. The well screen must intercept the water table at both high and low elevations. Free product floating on top of the water surface cannot enter a well if the water level is higher than the well screen, nor can free product enter a well if the water level is below the bottom of the well screen. It must be determined that groundwater conditions are such that a release would not go undetected.

(6) The stored product's compatibility with the monitoring device that will be used. The detection device must be able to detect the presence of at least one-eighth of an inch of free product on top of the groundwater in the monitoring wells. Groundwater monitoring is only effective if the stored product is lighter than water (i.e., has a specific gravity less than 1.0), which allows the product to float on the water surface. The stored product must not be soluble in water. Products that are highly soluble in water would not be detected as a separate liquid phase.

(b) Individuals performing this site assessment must be Commission licensed remediation consultants.

(c) The groundwater monitoring wells must be installed in the tank excavation and/or piping trench backfill. Two wells are sufficient for single tanks of 3,000 gallons or less capacity or for not more than 2-2,000 gallon tanks in one excavation. For multiple tanks, a minimum of 3 wells must be installed with at least one of the wells placed on the downgradient side. A sufficient number of wells must be installed so that the entire UST system is covered. Under normal circumstances, groundwater monitoring on piping runs would not be appropriate due to the depth to groundwater and the time required to detect a leak.

(d) Monitoring wells must be installed in accordance with OAC 785:35, Oklahoma Water Resources Board (OWRB), Well Driller and Pump Installer Licensing. OWRB rules allow a Commission licensed UST Installer to install monitoring wells during tank installations only. An OWRB-licensed driller must perform all other well installations.

(e) Groundwater monitoring wells must meet these minimum requirements:

(1) Be constructed from two- or four-inch polyvinyl chloride (PVC) or stainless steel casing with factory milled well screen.

(2) The well screen section should begin approximately two-feet below ground surface (bgs) for tank excavations. The well screen must extend to a depth of two feet below the tank bottom and/or piping.

(3) A filter pack of graded gravel or uncontaminated quartz sand, silica, or other material that will not affect the groundwater quality must be placed around the entire length of the well screen unless the tank and/or piping is backfilled with pea gravel.

(4) The well screen must terminate at least 18-inches below ground surface. The area above the well screen must be sealed (annular seal) to prevent surface spills from contaminating the well, which would result in a false indication of a release. An anti-shrink concrete or grout seal must extend at least 12 inches from within the monitoring well manhole. The remainder of the well above the well screen must be sealed with a cement-bentonite mixture or bentonite pellets.

(5) A concrete or cement surface pad must be installed around the casing at the surface with minimum dimensions of 3 feet in diameter by 3.5 inches thick. The surface pad must be sloped so to ensure that all surface water flows away from the well. The surface pad is not required if the well is completed in competent concrete or asphalt paving.

(6) The well(s) must be installed within manholes competent to withstand the anticipated traffic flow. The well casing must be secured with a tight fitting cap and the manhole cover bolted to prevent unauthorized tampering. The manhole cover must be clearly marked with an equilateral triangle to identify the well as a monitoring well or site assessment observation well.

(f) Records demonstrating compliance with this Section must be submitted to the Petroleum Storage Tank Division before a new groundwater monitoring system may be used or before an existing groundwater monitoring system may continue to be used after July 15, 2005. At a minimum, these records must include a site map that includes the location of tanks, piping, dispensers and all monitoring wells, copies of the OWRB Multi-Purpose Completion Report for each well, name of the company and individual performing the assessment.

(1) Any indication of free product floating on the water table must be reported to the Commission by telephone at (405) 521-6575 within 24 hours of the owner or operator or any of his or her employees discovering the product.

(2) If a monitoring report under the circumstances of above is not made within 24 hours, the owner or operator must be prepared to show documentation or evidence that would reasonably indicate his or her knowledge of the existence of free product was delayed.

(g) All groundwater monitoring wells must be checked by a Commission licensed monitoring well technician.

165:25-3-6.25. Interstitial monitoring

Interstitial monitoring between the underground storage tank system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of

the tank that routinely contains product. It must meet one of the following requirements:

(1) For double-walled underground storage tank systems, the sampling or testing method must detect a release monthly in accordance with the manufacturer instructions through the inner wall in any portion of the tank that routinely contains product.

(2) For underground storage tank systems with a secondary barrier within the excavation zone, the sampling or testing method used must detect a release between the underground storage tank system and the secondary barrier.

(A) The secondary barrier around or beneath the underground storage tank system must consist of artificially constructed material that is sufficiently thick and impermeable (at least 1.0×10^{-6} cm/sec) to direct a release to the monitoring point and permit its detection.

(B) The barrier must be compatible with the regulated substance stored so that a release from the underground storage tank system will not cause a deterioration of the barrier, allowing a release to pass through undetected.

(C) For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system.

(D) Groundwater, precipitation, or soil moisture must not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days.

(E) The site must be assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are specifically intended for use under such conditions.

(F) Monitoring wells must be clearly marked and secured to avoid unauthorized access and tampering.

(3) For tanks with an internally fitted liner, an automated device must be used that can detect a release between the inner wall of the tank and the liner. In addition, the liner must be compatible with the substance stored.

165:25-3-6.26. Automatic tank gauging systems

(a) Automatic tank gauging systems (ATGs) that test for the loss of product must conduct an automatic product level monitor test at a minimum frequency of once every 30 days, and be capable of detecting at least a 0.2 gallon per hour leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(b) ATGs that cannot detect a 0.1 gallon per hour leak rate monthly or perform inventory reconciliation are required to have monthly inventory reconciliation done in conjunction with them.

(c) Automatic tank gauging systems (ATG's) must be third party certified for the size of tanks and for the quantity of tanks that are manifolded together. Only third party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), as evidenced by their posting on the NWGLDE Web Site, will be accepted (nwglde.org).

165:25-3-6.27. Manual tank gauging

(a) **Restrictions.** Manual tank gauging may be used as an approved method of release detection if:

(1) The tank has a nominal capacity of 1,000 gallons or less; or

(2) The tank has a nominal capacity of between 1,001 and 2,000 gallons and manual tank gauging is combined with periodic (every five years) tank tightness testing as required by this Subchapter;

(b) **Requirements.**

(1) Tank liquid level measurements are taken at the beginning and ending of the period appearing in Appendix Q, during which no liquid is added to or removed from the tank.

(2) Level measurements are based on an average of 2 consecutive stick readings at both the beginning and ending of the period.

(3) The equipment used is capable of measuring the product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(4) A leak is suspected and subject to the release reporting requirements of Subchapter 3, Part 1 of this Chapter if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the table in Appendix Q.

165:25-3-6.28. Statistical Inventory Reconciliation (SIR)

(a) Deliveries, withdrawals and balance remaining must be recorded each operating day on the OCC Monthly Inventory Reconciliation Form or an electronic equivalent and data must be reconciled monthly.

(b) The tank must be equipped with a drop tube and measured for water at least monthly.

(c) 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").

(d) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(e) Records must be submitted to a certified SIR vendor for monthly evaluation. Only third party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), as evidenced by their posting on the NWGLDE Web Site, will be accepted (nwglde.org).

(f) SIR analysis reports may include a summary report of the quantitative results and must include copies of all Monthly Inventory Reconciliation Forms.

(g) Results of monthly SIR analysis must be on premises no later than the end of the following month.

165:25-3-6.29. Installation and Monitoring requirements for piping

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

(1) **Pressurized piping.**

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

(B) New installations and facilities replacing a piping system must have at least one sump sensor, float or similar mechanical device at each submersible pump, or at the lowest sump at the lowest island for each tank, whichever is at the lowest end of the piping gradient.

(C) New installations and facilities replacing a piping system must have double-walled piping. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.

(D) The underground pressure piping from the master dispenser to the satellite must be designed and installed so that the satellite piping is tested by the automatic line leak detector. An annual line tightness test is required on the satellite underground piping.

(2) **Suction piping.** Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every 3 years by a certified tester, or use a monthly monitoring method conducted in accordance with this Chapter. No release detection is required for suction piping designed and constructed to meet the following standards:

(A) The below-grade piping operates at less than atmospheric pressure.

(B) The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released.

(C) Only one check valve is included in each suction line.

(D) The check valve is located directly below and as close as is practical to the suction pump.

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

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

(i) Methods which alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 psi line pressure within 1 hour.

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

(iii) Automatic line leak detectors installed on or after September 22, 1991 must be capable of detecting the leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(iv) A hydrostatic line tightness test must be done annually by a certified tester in accordance with this chapter.

(B) Sump sensors with automatic line leak detectors.

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

(ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.

(C) Electronic line leak detection. A certified electronic line leak detector may be used in lieu of an automatic mechanical line leak detector and annual tightness test only if:

(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and

(ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and

(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, AND the system is tested annually, and if necessary, calibrated in accordance with manufacturer's specifications.

(D) Monthly vapor monitoring. Monthly vapor monitoring may be used in lieu of an annual line tightness test only if the vapor monitoring system is installed and monitored in accordance with 165:25-3-6.23 for vapor monitoring.

(E) Other methods applicable to tanks and lines. Any of the acceptable methods for tanks listed in Subchapter 3 of this Chapter (Vapor monitoring and interstitial monitoring for double-walled piping and tanks) may be used in lieu of annual line tightness testing if it is designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

(4) **Methods of release detection for suction piping.** Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every 3 years by a certified tester, or meet all requirements for safe suction piping as described in 165:25-3-6.29. No release detection is required for safe suction piping.

165:25-3-6.30. Commission-approved alternative methods

(a) Any other type of release detection method, or combination of methods, may be used if:

(1) The method can detect a 0.2 gallon per hour leak rate or a release of 130 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

(2) The owner can demonstrate that the method proposed can detect a release as effectively as any of the methods allowed in this Subchapter. In comparing methods, the Commission will consider the size of release that the method can detect and the frequency and reliability with which it can be detected.

(b) The Commission may impose additional conditions on the use of any alternative methods as it deems necessary to protect the public health and safety and the environment.

PART 3. RELEASE ~~REPORTING~~ INVESTIGATION REQUIREMENTS

165:25-3-8. Release investigation and confirmation

(a) This Section applies to the investigation of all reportable releases unless the Commission's staff specifically waives any part of this Section in writing.

(b) Owners and/or operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under this Chapter within 7 days of receipt of notice from the Commission, using the following steps or another procedure approved by the Commission:

(1) **System test.** Owners and/or operators must conduct tests (according to the requirements for precision tightness testing in this Chapter) that determine whether a leak exists in ~~that portion of~~ the tank ~~that routinely contains product,~~ or the attached delivery piping, or both.

(A) Owners and/or operators must repair, replace, or upgrade the underground storage tank system and begin investigation in accordance with (b)(2) of this Section if the test results for the system, tank, or delivery piping indicate that a leak exists.

(B) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate that a leak exists and chemical concentrations of regulated substances detected in soil or water are not the basis for suspecting a release.

(C) Owners and/or operators must conduct a site check as described in (b)(2) of this Section if the test results for the system, tank and delivery piping do not indicate that a leak exists but indicate concentrations of regulated substances detected in soil or water are above action levels cited in (c).

(2) **Site check.** Owners and/or operators must measure for the presence of a release where released chemicals are most likely to be present at the underground storage tank system site. In selecting sample types, sample locations, sample depths, and measurement methods, owners and/or operators must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release. Sample locations should be approximately 5 feet (5') from the outside of the UST system in native soil or another location approved by the Commission. Analyses for both BTEX constituents and the appropriate TPH must be obtained in all cases. For sites where used oil may be involved, as determined through a TPH analysis, TCLP analysis for metals, semi-volatiles, and volatiles will be required. The TCLP results will be used on a case-by-case basis to establish cleanup levels ~~or to refer the case to the Oklahoma Department of Environmental Quality for regulation~~. The selected method must be able to detect the most stringent cleanup levels required in this Chapter. The Total Petroleum Hydrocarbon (TPH) Laboratory Methodology 418.1 will not be accepted for this Chapter.

(A) If the test results for soil and/or groundwater taken outside the excavation zone or the underground storage tank system site confirm that a release has occurred, owners and/or operators must begin corrective action in accordance with OAC 165:29, the Commission's Rules on Remediation.

(B) If the test results for the native soil and/or groundwater or the underground storage tank system site do not indicate that a release has occurred, further investigation is not required.

(c) Levels of chemical constituent concentrations that may confirm a release are:

(1) Benzene
- (A) Native Soils - 0.5 mg/kg
- (B) Groundwater - 0.005 mg/l

(2) Toluene
- (A) Native Soils - 40.0 mg/kg
- (B) Groundwater - 1.0 mg/l

(3) Ethyl Benzene
- (A) Native Soils - 15.0 mg/kg
- (B) Groundwater - 0.7 mg/l

(4) X ylene
- (A) Native Soils - 200.0 mg/kg
- (B) Groundwater - 10.0 mg/l

(5) TPH
- (A) Native Soils - 50.0 mg/kg
- (B) Groundwater - 2.0 mg/l
- (C) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case at the direction of the Commission.

(d) Within 20 days after the reporting of a release, the owner and/or operator must submit a report to the Commission summarizing the steps taken under (a) of this Section and any resulting information or data. If a release is confirmed through performance of the steps taken under this Section, then the report must be submitted in accordance with a format established by the Commission, after which a remediation may be undertaken under the provisions of Chapter 29.

PART 9. LICENSING OF UNDERGROUND STORAGE TANK INSTALLERS [REVOKED]

165:25-3-50. Licensing procedure for UST Installers [REVOKED]

~~(a) Any individual who would like to become a licensed UST Installer must:~~

~~(1) Complete an application form prepared by the Commission.~~

~~(2) Provide sufficient proof of two years related work experience, with confirmed active participation in the completion of at least three installations. If applicant is a current UST installer license holder in another state, the work experience may be substituted for each confirmed year he or she held the license.~~

~~(3) The individual must pass an examination administered by the Commission.~~

~~(4) Installers must pay fees for applications, examinations, and licensing according to the schedule provided in OAC 165:5, the Commission's Rules of Practice.~~

~~(5) Installers must also certify that they will comply with all Commission rules and requirements for underground storage tanks.~~

~~(b) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete will result in forfeiture of fees and will require a new application and appropriate fees.~~

~~(c) Continuing education is required to maintain a UST Installer license; this consists of four hours of continuing education through a Commission accredited program every two years.~~

~~(d) The Commission has the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any underground storage tank installer who is found guilty of:~~

~~(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.~~

~~(2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.~~

~~(3) Knowingly making false statements or signing false statements, certificates or affidavits to the Commission or to clients with the intention to induce payment.~~

~~(4) Aiding or assisting another person in violating any provision of this Chapter.~~

~~(5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the UST Installer.~~

~~(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.~~

~~(7) Failure to comply with this Chapter, Chapters 26, 27, 29 and the Oklahoma Petroleum Storage Tank Regulation Act (17 O.S. § 301 et seq.) Oklahoma Petroleum Storage Tank Release Indemnity Program will result in the Commission being authorized to seek a suspension and/or revocation of the UST Installer license.~~

~~(8) If under indictment or convicted of any criminal offense.~~

~~(e) Prior to any license suspension, revocation, or refusal to renew, the Director of the Petroleum Storage Tank Division will have the matter investigated and a report made for his or her consideration. If the Director elects to pursue suspension, revocation, or refusal to renew, the Commission will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of proof is substantial evidence of violations of this Chapter, applicable state law, or incompetence and rests upon the Petroleum Storage Tank Division.~~

~~(f) This Section in no way exempts the UST Installer from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.~~

~~(g) After the effective date of these rules, UST Installers are no longer allowed to remove underground storage tanks and will be required to obtain a separate UST Remover license before they can remove underground storage tanks.~~

165:25-3-51. Licensing procedure for UST Removers [REVOKED]

~~(a) Any individual who would like to become a licensed UST Remover must:~~

~~(1) Complete an application form prepared by the Commission.~~

~~(2) Provide sufficient proof of two years related work experience, with confirmed active participation in the completion of at least three (3) removals. If applicant is a current UST remover license holder in another state, the work experience may be substituted for each confirmed year he or she held the license.~~

~~(3) Pass an examination administered by the Commission.~~

~~(4) Pay fees for applications, examinations, and licensing according to the schedule provided in OAC 165:5, the Commission's Rules of Practice.~~

~~(5) Certify that they will comply with all Commission rules and requirements for removal of underground storage tanks.~~

~~(b) All examinations and licensing procedures must be completed within one (1) year of approval of the application. Failure to complete will result in forfeiture of fees and will require a new application and appropriate fees.~~

~~(c) Continuing education is required to maintain a UST Removers license; this consists of four hours of continuing education through a Commission approved program every two years.~~

~~(d) The Commission has the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any underground storage tank installer who is found guilty of:~~

~~(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.~~

~~(2) Any gross negligence, incompetence or misconduct in removal work performed pursuant to this Chapter.~~

~~(3) Knowingly making false statements or signing false statements, certificates or affidavits to the Commission or to clients with the intention to induce payment.~~

~~(4) Aiding or assisting another person in violating any provision of this Chapter.~~

~~(5) Signing a verification statement for work performed pursuant to this Chapter that was not performed by the UST Remover.~~

~~(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.~~

~~(7) Failure to comply with this Chapter and the Oklahoma Petroleum Storage Tank Regulation Act (17 O.S. § 301 et seq.) will result in the Commission being authorized to seek a suspension and/or revocation of the UST Remover license.~~

~~(e) Prior to any license suspension, revocation, or refusal to renew, the Director of the Petroleum Storage Tank Division will have the matter investigated and a report made for his or her consideration. If the Director elects to proceed with suspension, revocation, or refusal to renew, a Notice of Intent will be mailed to the licensee. If the Director elects to pursue suspension, revocation, or refusal to renew, the Commission will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of clear and convincing proof of violations of this Chapter or applicable state law rests upon the Petroleum Storage Tank Division.~~

~~(f) This Section in no way exempts the UST Remover from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.~~

165:25-3-52. Licensing procedure for Monitoring Well Technician [REVOKED]

~~(a) Monitoring of vapor and groundwater wells for the purpose of monthly release detection must be performed by an individual licensed by the OCC Petroleum Storage Tank Division (PSTD). An individual who applies to be licensed to perform monthly release detection of monitoring wells must:~~

~~(1) Complete an application form prepared by the Commission.~~

~~(2) Provide a copy of the manufacturer's instructions for the monitoring equipment that will be used and display his/her competence in the use of the monitoring equipment to the PSTD. The use of new or different monitoring equipment will require the user to submit the manufacturer's instructions and display his/her competence in the use of the new or different equipment.~~

~~(3) Certify that they will comply with all Commission rules and requirements.~~

~~(4) Fees must be paid in accordance with 165:5.~~

~~(b) A license to monitor vapor and groundwater monitoring wells for the purpose of monthly release detection must be renewed every two years.~~

~~(c) To have a license renewed, the individual must have completed at least four (4) hours of continuing education in an area applicable to vapor monitoring and monitoring equipment. Hands-on training by the equipment manufacturer, and attested to by the manufacturer, is one example of satisfactory continuing education.~~

~~(d) Individuals who are monitoring vapor and groundwater monitor wells for monthly release detection purposes must report readings that exceed the levels in 165:25-3-5.3(j) and (k) to the facility owner and/or operator within 48 hours.~~

~~(e) Falsification of monitoring reports will result in the Commission being authorized to seek a suspension and/or revocation of the individual's license.~~

PART 11. REPAIRS TO UNDERGROUND STORAGE TANK SYSTEMS [REVOKED]

165:25-3-55. Repairs to underground storage tank systems [REVOKED]

~~(a) Repairs to underground storage tank systems must prevent releases due to structural failure or corrosion for the remaining operational life of the system.~~

~~(b) Repairs shall be conducted by qualified personnel possessing the appropriate skills, experience, competence, and any required license or certification to complete the work in accordance with provisions of this Chapter.~~

~~(c) Any repair shall be properly conducted in accordance with a standard or code of practice developed by a nationally recognized association or independent testing laboratory.~~

~~(d) Requirements of this Section do not apply to routine and minor maintenance activities related to the tank and piping system.~~

~~(e) Following completion of repairs, a tightness test of the repaired structure, performed by a certified tester, is required prior to returning it to service.~~

PART 13. REMOVAL AND CLOSURE OF UNDERGROUND STORAGE TANK SYSTEMS [REVOKED]

165:25-3-60. Tank removal and closure [REVOKED]

~~(a) Owners and Operators of all underground storage tank systems must notify the Petroleum Storage Tank Division at least 14 days prior to the removal or permanent closure of underground storage tanks and/or lines. If events require a change in the date of removal, the Division shall be given 48 hours notice of the new date.~~

~~(b) An authorized agent of the Commission may be present to observe the removal and to inspect the closed tank system and the surrounding environment prior to backfilling.~~

~~(c) Tanks and lines must be removed upon closure unless the Commission grants a variance that allows the tanks to be closed in place by filling.~~

~~(d) All underground storage tanks must be removed by a licensed UST Remover.~~

~~(e) Any company that removes underground storage tank systems must have a licensed UST Remover on the job site during removal.~~

165:25-3-61. Compliance with removal and closure requirements [REVOKED]

~~Owners and/or operators of all underground storage tank systems that are temporarily taken out of service, permanently closed, or removed must comply with all the requirements of this Part.~~

165:25-3-62. Temporary removal from service [REVOKED]

~~(a) When an underground storage tank system is taken temporarily out of service, the owner or operator must:~~

~~(1) Continue the operation and maintenance of corrosion protection as required by this Chapter;~~

~~(2) Continue release detection as required by this Chapter;~~

~~(3) Comply with the requirements of this Chapter concerning release reporting and corrective action; and~~

~~(4) Notify the Commission of a change in service on the prescribed form.~~

~~(b) Release detection is not required as long as the underground storage tank system is empty. For the purposes of this Subchapter, the underground storage tank system is empty when all materials have been removed using commonly employed practices so that no more than 1 inch (1") of residue remains in the tank.~~

165:25-3-63. Temporary closure; requirements for returning to service [REVOKED]

~~(a) When an underground storage tank system is taken out of service for 3 months or more, but less than 12 months, the owner or operator must comply with the requirements of 165:25-3-62 and meet the following additional requirements:~~

~~(1) All tanks must be drained.~~

~~(2) All vent lines must be left open and functioning.~~

~~(3) All other lines, pumps, manways, and ancillary equipment must be capped and secured.~~

~~(b) W hen an underground storage tank system is returned to service:~~

~~(1) A tank and line tightness test, performed by a certified tester, must be completed on the underground portion of temporarily closed systems prior to returning the system to service if it has been out of service for more than 12 months.~~

~~(2) Systems out of service for more than 12 months may be required to meet all the requirements of this Chapter.~~

165:25-3-64. Permanent closure [REVOKED]

~~(a) All permanent tank closures must be performed by a licensed UST Remover.~~

~~(b) All permanent tank closures must be completed by removing the tank and lines from the ground, unless the Commission grants a variance of this requirement and allows the tanks to be filled in place with inert material. A variance will only be granted by application, notice and hearing. The burden of proof rests on the person seeking a variance.~~

165:25-3-64.1. Underground storage tank removal [REVOKED]

~~All underground storage tanks and/or lines must be removed by a licensed UST Remover who shall be at the job site at all times during the removal.~~

165:25-3-65. Assessing the site at closure or change in service [REVOKED]

~~(a) Before permanent closure, or a change in service, or tank or line repair and/or replacement is completed, the owner must measure for the presence of a release where contamination is most likely to be present at the underground storage tank system site. The Commission, at its discretion, may have a witness present to verify that sampling is completed appropriately. Failure of the owner or the owner's representative to schedule the sampling 14 days in advance with the PSTD and to advise PSTD at least 48 hours in advance of schedule changes, may result in the PSTD requiring a post-closure site assessment, and Commission initiated enforcement.~~

~~(b) In selecting sample types, sample locations, and measurement methods, the owner must consider the method of closure, the nature of the stored substance, the type of native soil, the depth of groundwater, and other factors appropriate for identifying the presence of a release. Sample locations should be outside of the UST system in native soil or another location approved by the Commission. All samples required to be collected and analyzed pursuant to this Section must be analyzed by an Oklahoma Department of Environmental Quality certified laboratory.~~

~~(1) For tank systems containing petroleum product, analyses must be done for both TPH and BTEX.~~

~~(2) Levels of contamination in native soils and groundwater that shall require further action, at the direction of the commission, are:~~

~~(A) Benzene~~

~~(i) Native Soils - 0.5 mg/kg~~

~~(ii) Groundwater - 0.005 mg/l~~

~~(B) Toluene~~

~~(i) Native Soils - 40.0 mg/kg~~

~~(ii) Groundwater - 1.0 mg/l~~

~~(C) E thyl Benzene~~

~~(i) Native Soils - 15.0 mg/kg~~

~~(ii) Groundwater - 0.7 mg/l~~

~~(D) Xylene~~

~~(i) Native Soils - 200.0 mg/kg~~

~~(ii) Groundwater - 10.0 mg/l~~

~~(E) TPH~~

~~(i) Native Soils - 50.0 mg/kg~~

~~(ii) Groundwater - 2.0 mg/l~~

~~(iii) If BTEX concentrations are below action levels, a TPH concentration of 500 ppm or mg/kg in soil shall be required to confirm a case a the direction of the commission.~~

~~(c) If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered, the owner must begin corrective action in accordance with OAC 165:29, the Commission's Rules on Remediation.~~

~~(d) All sampling at closures must be under the supervision of a Licensed Remediation Consultant.~~
~~(e) Only soil and/or groundwater sampling results will be acceptable for site assessment at closure. Monitoring well records and/or inventory reconciliation records will not be accepted.~~

165:25-3-66. Applicability to previously closed underground storage tank systems [REVOKED]

~~When directed by the Commission, the owner of an underground storage tank system closed before April 21, 1989 must assess the excavation zone and close the underground storage tank system in accordance with this Chapter. The Commission may direct the owner to assess the site or may assess the site itself if releases from the underground storage tank system may, in the judgment of the Commission, pose a current or potential threat to human health, safety or welfare or the environment.~~

165:25-3-67. Closure records [REVOKED]

~~Owners and operators must maintain records that demonstrate compliance with all tank closure requirements. Records of the results of the required site assessments must be maintained for at least three (3) years after completion of permanent closure or change in service in one of the following ways:~~

~~(1) By the owner or operator who took the UST system out of service.~~

~~(2) By the current owner or operator of the UST system site.~~

~~(3) Mailing these records to the Petroleum Storage Tank Division if they cannot be maintained at the closed facility~~.

SUBCHAPTER 5. UPGRADES

165:25-5-2. Tank upgrading requirements

Existing steel tanks must be upgraded (by December 23, 1998) to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory:

(1) Interior lining. A tank may be upgraded by interior lining if:

(A) The tank is repaired in accordance with ~~Subchapter 3, Part 11~~ 165:25-2-111 of this Chapter and the liner is installed in accordance with a recognized association or an independent testing laboratory.

(B) Within 10 years after lining and every 5 years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

(2) Cathodic protection. A tank may be upgraded by cathodic protection if the cathodic protection system meets Commission requirements and the integrity of the tank is ensured using one of the following methods:

(A) The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion.

(B) The tank has been installed for less than 10 years and is monitored monthly for releases in accordance with Commission requirements.

(C) The tank has been installed for less than 10 years and is assessed for corrosion holes by conducting 2 tightness tests that meet Commission requirements. The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between 3 and 6 months following the first operation of the cathodic protection system.

(D) The tank is assessed for corrosion holes by a method that is determined by the Commission to prevent releases in a manner that is no less protective of human health and the environment that (A), (B), or (C) of this paragraph.

(3) Internal lining combined with cathodic protection. A tank may be upgraded by both internal lining and cathodic protection if:

(A) The lining is installed in accordance with the requirements of Subchapter 2, Part 5 of this Chapter.

(B) The cathodic protection system meets Commission requirements.

(C) The following codes and standards may be used to comply with 165:25-5-2: API 1631, API 1632, NLPA 631, and NACE RP-0285.

SUBCHAPTER 6. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED BY AIRPORTS OPEN TO THE PUBLIC

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:25-6-1. Application

(a) This Subchapter contains provisions that particularly apply to storage tank systems for aircraft fuel at airports. A storage tank system consists of an underground storage tank and the pipes, pumps and dispensers attached to it. Aircraft fuel servicing vehicles are not included.

(b) This Subchapter governs airport operations only insofar as they relate to the installation, operation, maintenance and inspection of fuel storage tank systems.

~~(c) Oklahoma has two large national/international airports, almost fifty regional airports, forty district airports, almost forty community airports, and hundreds of private airports. The facilities needed, the staffing, the traffic and the safety requirements for these airports are quite different. Private airstrips are excluded from this Subchapter entirely, which still leaves a very diverse group, ranging from heavily used airports with many very large fuel tanks to those that have~~

~~little traffic and minimal fuel service. This Subchapter tries to take these differences into consideration.~~

(~~d~~c) Subchapters 1, 2, ~~and~~ 3, and 5 shall also apply in addition to this Subchapter.

~~(e) Any company that installs underground storage tank systems must have a UST installer on the job site during the installation regardless of whether it is installing UST's for itself or for another company.~~

PART 11. MISCELLANEOUS SAFETY REQUIREMENTS

165:25-6-36. Sources of ignition [REVOKED]

~~(a) Smoking materials, including matches and lighters, must not be used within 20 feet (20', or 6 m) of areas used for fueling, servicing fuel systems for internal combustion engines, or receiving or dispensing Class I liquids.~~

~~(b) The motors of all equipment being fueled must be shut off during the fueling operation, except for emergency generators, pumps, etc., where continuing operation is essential~~.

SUBCHAPTER 8. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED BY MARINAS

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:25-8-1. Application

(a) This Subchapter contains provisions that particularly apply to the storage, handling and use of gasoline and diesel fuel at marinas.

(b) Subchapters 1, 2, ~~and~~ 3, and 5 shall also apply in addition to this Subchapter.

~~(c) Any company that installs underground storage tank systems must have a UST installer on the job site during the installation of the UST and piping regardless of whether it is installing USTs for itself or for another company~~.

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

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

(e) All new underground product piping at existing facilities must be installed in accordance with 165:25-2-55.1 "Underground storage tank piping materials".

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

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

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

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

PART 3. OVER-WATER PIPING REQUIREMENTS

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

(a) The design, fabrication, assembly, test, and inspection of the piping system from the fuel tank to the fuel dispensers must be in accordance with NFPA 30 and NFPA 30A.

(b) The piping must be installed according to the manufacturers installation recommendations and instructions.

(c) Piping must be listed and approved by the manufacturer for aboveground installations.

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

(a) **Steel piping.**

(1) Piping shall be installed with proper support and strain relief in order to eliminate the physical stress on the piping and piping connections caused by the constant movement of the water and floating dock. Fuel piping and electrical conduit shall be rigidly attached to the dock before the piping enters the sump area, in order to prevent strain on the entry boots and primary pipe fittings.

(2) Steel flex connectors must be used between the shore piping and the piping on the floating structure and between separate sections of the floating structure to allow for movement of the dock and changes in water levels.

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

(4) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each line serving the dock. The breakaway device shall be located where the dock piping will separate from the shore or secured ramp piping. The piping shall be secured at both ends of the breakaway device so that the piping will withstand the forces and pressures exerted upon it.

(5) There must be a normally closed explosion proof solenoid valve installed in each product line at the shoreline.

(6) A ball valve must be installed at the shoreline in order to manually shut off the flow of fuel.

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

automatically control the electricity to both the solenoid valve and suction pump motor.

(8) If the onshore piping is double walled a transition sump is required at the shoreline in order to contain a release from the onshore piping. The transition sump must contain the ball valve and solenoid valve and be rigidly anchored in place.

(b) **Double walled piping.**

(1) Double walled piping must be installed according to the double wall piping manufacturer recommendations.

(2) All double walled piping installed above the water shall be installed inside a rigid metal chase or conduit except at joints requiring flexibility. A flexible metal conduit can be used between shore piping and piping on the floating structure or between separate sections of the floating structure to allow for movement of the dock and changes in water levels. Both the rigid and flexible metal chase/conduit must shield the fuel pipe from damage by fire and in itself be fire resistant.

(3) Due to the constant movement of the water and the floating dock, piping shall be installed with proper support and strain relief in order to eliminate the physical stress on the piping and piping connections. Fuel piping and electrical conduit shall be rigidly attached to the dock before the piping enters the sump area, in order to prevent strain on the entry boots and primary pipe fittings.

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

(5) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each line serving the dock. The breakaway device shall be located where the dock piping will separate from the shore or secured ramp piping. The piping shall be secured at both ends of the breakaway device so that the piping will withstand the forces and pressures exerted upon it.

(6) There must be a normally closed explosion proof solenoid valve installed in each product line at the shoreline.

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

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

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

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

~~(a) All underground product piping at existing facilities must be installed or upgraded before the deadline date of July 15, 2007 as follows:~~

~~(1) Non-metallic;~~

~~(2) Double walled;~~

~~(3) A tracer locator wire must be installed in all piping trenches; and~~

~~(4) Dispenser and piping transition sumps must be installed and monitored with sensors.~~

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

165:25-8-7. Aboveground piping at marinas [REVOKED]

~~All aboveground product piping at existing facilities before the deadline date of July 15, 2007 must be installed or upgraded as follows:~~

~~(1) The design, fabrication, assembly, test and inspection of the piping system from the fuel tank to the fuel dispensers must be in accordance with NFPA 30, NFPA 30A, and the piping manufacturer's installation recommendations and instructions. Piping must be listed and approved by the manufacturer for aboveground installations.~~

~~(2) A water tight transition or piping sump must be buried and installed as close as practical to the shore line as a transition from onshore to over water piping. A sufficient amount of concrete should be poured over the transition sump to keep it from floating if the sump is installed below the flood plain. There should be a normally closed explosion proof solenoid valve and pressure relief valve installed in each product line inside the transition sump. If a pressure system is used, all sensors should automatically control the electricity to both the solenoid valve and submerged pump. If a suction system is used, all sensors should automatically control the electricity to both the solenoid valve and suction pump motor.~~

~~(3) Piping at all hinge locations must be installed according to the double wall piping manufacturer recommendations. The dock or ramp piping must be designed and installed at least level but preferably with a slope between sumps in order to eliminate any air pockets in the piping and also to insure that any leakage into the interstice piping will drain into the sumps. Due to the constant movement of the water and the floating dock, piping shall be installed with proper support and strain relief in order to eliminate the physical stress on the piping and piping connections. Fuel piping and electrical conduit shall be rigidly attached to the dock before the piping enters the sump area, in order to prevent strain on the sump entry boots and primary pipe fittings.~~

~~(4) All marina floating docks and pier installations must have double walled piping and either stainless steel~~

~~or fiberglass clad steel sumps with monitoring sensors that automatically control the electricity to the pumping device and solenoid valves.~~

~~(5) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point shall be installed on each line serving the dock. The breakaway device shall be installed at the point that the dock piping will separate from the shore or secured ramp piping. The piping shall be secured at both ends of the breakaway device so that the piping will withstand the forces and pressures exerted upon it.~~

~~(6) All aboveground piping and system components must be protected from being damaged by fire, collision and abrasion.~~

~~(7) All flexible piping installed aboveground, on the dock or ramp shall be a metallic ducted flexible double wall system or an approved double wall piping system installed inside a metal conduit or chase.~~

~~(8) All piping installed above the water on the dock shall be installed inside a metal conduit or chase for the purpose of eliminating sagging in the piping thus assuring that any leak in the piping interstice will drain into the sumps.~~

165:25-8-8. Installation and monitoring requirements for piping [REVOKED]

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

~~(1) **Pressurized piping.**~~

~~(A) All piping that conveys regulated substances under pressure must be equipped with an automatic mechanical or electronic line leak detector installed and in operation.~~

~~(B) Aboveground dock piping systems upgraded before the deadline date of July 15, 2007, must have double walled piping and dispenser, piping or transition sumps. Each sump shall be monitored with a sensor, float or similar mechanical device and automatically control the electricity to both the solenoid valve and submerged pump. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs. However, the interstitial piping boot on the piping leaving the piping sump located on shore as in 165:25-8-7(b) must be kept sealed in order to eliminate any leakage from leaving that sump and allowed to enter the dock dispenser or piping sumps.~~

~~(2) **Suction piping.** Aboveground dock piping systems upgraded before the deadline date of July 15, 2007, must have double walled piping and pump, piping and transition sumps. Each sump shall be monitored with a sensor, float or similar mechanical device at each sump and automatically control the electricity to both the solenoid valve and suction pump motor. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs. However, the interstitial piping boot on the piping leaving the piping sump located on shore as in 165:25-8-7(b) must be kept sealed in order to eliminate any leakage from leaving that sump and allowed to enter the dock dispenser or piping sumps.~~

~~(3) **Methods of release detection for pressurized piping.** The method of release detection for pressurized piping must be done in accordance with the following requirements:~~

~~(A) **Automatic mechanical line leak detectors and annual line tightness testing.** Methods which alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through the piping may be used only if they detect leaks of 3 gallons per hour at 10 psi line pressure within 1 hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements. Automatic mechanical line leak detectors installed on or after September 22, 1991 must be capable of detecting the leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05. A hydrostatic line tightness test must be done annually by a certified tester in accordance with this Chapter in addition to any other line leak detection method; and~~

~~(B) **Sump sensors.** Sump sensors, floats or similar mechanical devices at each dispenser, piping and transition sump shall also be used in addition to automatic line leak detectors. The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.~~

~~(C) **Alternative to automatic mechanical line leak detector and annual line tightness testing.** A certified electronic line leak detector may be used in lieu of an automatic mechanical line leak detector and annual line tightness test only if:~~

~~(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and~~

~~(ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and~~

~~(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, and the system is tested annually in accordance with manufacturer's specifications.~~

~~(4) **Methods of release detection for suction piping.** The method of release detection for suction piping must be done in accordance with the following requirement:~~

~~(A) **Sump sensors.** Each sump shall be monitored with a sensor, float or similar mechanical device and automatically control the electricity to both the solenoid valve and suction pump motor. The sump sensors, floats or other mechanical devices used must be~~

~~tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.~~

PART 5. DISPENSER REQUIREMENTS

165:25-8-14. Dispenser hose

Listed hose assemblies must be used to dispense fuel. Where hose length exceeds 18 ft (5.5m), the hose shall be secured so as to protect it from damage, such as a hose reel, and in no case shall the hose exceed 50 ft (15m) in length. ~~Two or more hoses shall not be coupled together.~~

165:25-8-15. Nozzles

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

PART 9. DISPENSING PROCEDURES

165:25-8-29. Attendants at marinas

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

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

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

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

(3) Must be readily accessible to patrons; and

(4) Emergency instructions must be conspicuously posted.

PART 11. MISCELLANEOUS SAFETY REQUIREMENTS

165:25-8-35. Required signs

All marine service stations must have a sign printed in $\frac{1}{4}$ to $\frac{1}{2}$ inch text in black or ~~two-inch (2", or 5-cm)~~ red block capital letters on a white background conspicuously posted and easily readable from ~~in~~ the dispensing area, which reads:

(1) BEFORE FUELING:

(A) Stop all engines and auxiliaries.

(B) Shut off all electricity, open flames and heat sources.

(C) Check all bilges for fuel vapors.

(D) Extinguish all smoking materials.

(E) Close access fittings and openings to prevent fuel vapors from entering enclosed spaces of the vessel.

(2) DURING FUELING:

(A) Maintain nozzle contact with the fill pipe.

(B) Wipe up spills immediately.

(C) Avoid overfilling.

(D) Fuel filling nozzle must be attended at all times.

(3) AFTER FUELING:

(A) Inspect bilges for leakage and fuel odors.

(B) Ventilate until odors are gone.

165:25-8-36. Fire extinguishers

(a) Each marina must be provided with listed fire extinguishers that have a minimum capability of 40 pounds, Class B, C.

(b) A minimum of ~~two~~ three extinguishers must be located at the fuel dock, and one or more must be located within ~~100~~ 50 feet (~~100', or 30~~ 15 m) of each pump, dispenser, underground fill pipe opening and lubrication or service room.

(c) Where practical, there should be a frost-proof water hydrant with a minimum of five-eighths inch (5/8") diameter hose on the fuel dock. Piers that extend more than 500 feet (500', or 152 m) in travel distance from shore must have a Class III standpipe installed in accordance with NFPA 14. Standard for the Installation of Standpipe and Hose Systems.

(d) There must be a knife readily accessible at the fuel dock for quickly cutting mooring lines in an emergency and a push pole for shoving away a boat.

SUBCHAPTER 14. SPECIAL REQUIREMENTS FOR UNDERGROUND STORAGE TANK SYSTEMS UTILIZED BY BULK PLANT FACILITIES

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:25-14-1. Application

(a) This Subchapter applies to the storage, handling and use of gasoline, aviation fuel, diesel fuel and volatile blending materials used in motor fuel like kerosene and ethanol at bulk plant facilities. Bulk plants built after July 1, 2001 must comply with all provisions of this Chapter and Subchapter.

(b) Those bulk plants already in existence when this Subchapter was adopted vary in size, in the way they are built, in their local surroundings, in the customers they serve and in their role in the local economy. It is difficult to make good rules that can be fairly applied to all these older bulk plants. The goal in the application of this Subchapter to pre-existing bulk plants is to achieve the maximum safety that is practically possible at the least possible expense. If a safety or environmental threat does exist at a bulk plant, the owner will only be required to correct the specific problem and to do so in the most cost-effective way possible.

(c) Subchapters 1, 2, ~~and~~ 3, and 5 shall also apply in addition to this Subchapter.

(d) Any company that installs underground storage tank systems must have a UST installer on the job site during the installation of the UST and piping regardless of whether it is installing UST's for itself or for another company.

SUBCHAPTER 18. INSPECTIONS, NOTICES OF VIOLATION, AND CITATIONS

PART 5. PENALTIES

165:25-18-19. Penalties

~~Pursuant to 17 O.S. § 306, any owner or operator of an underground storage tank system located within the State who violates any of the provisions of this Chapter may be issued a citation or may be subject to an administrative penalty not to exceed $10,000.00 for each day that the violation continues.~~

(a) Pursuant to 17 O.S. § 306, any owner or operator of a regulated aboveground storage tank system located within the State who violates any of the provisions of this Chapter may be issued a citation or may be subject to an administrative penalty not to exceed $10,000.00 for each day that the violation continues.

(b) 17 O.S. § 311 provides that any person who has been determined by the Commission to have violated any provisions of the Storage Tank Regulation Act or any rule promulgated or order issued pursuant to the provisions of the Oklahoma Storage Tank Regulation Act may be held liable for an administrative penalty of not more than $10,000.00 per day of continuing violation and 17 O.S. § 365(H) provides that owners or operators who fail to comply with any order issued by the Commission for corrective or enforcement action may be subject to an administrative penalty not to exceed $25,000.00 per tank per day of violation. Under this Chapter the Manager of Inspection and Compliance may issue citations under the authority of 17 O.S. § 306 and Part 5 of this Subchapter, but only the Commission after notice and hearing may impose a larger fine.

APPENDIX S. FINE CITATIONS TABLE [REVOKED]

APPENDIX S. FINE CITATIONS TABLE [NEW]

Rule	Violation	Fine Amount
Registration & Permit Requirements		
165:25-1-42	Failure to register tanks within 30 days of bringing the system into service	$500
165:25-1-41 165:25-1-51	Failure to amend registration within 30 days to reflect change in ownership or tank status	$500
165:25-1-64 165:25-1-67	Failure to pay permit fees prior to due date	Not > 50% of fee
Notification Requirements		
165:25-1-41	Failure to properly identify all storage tank systems on OCC forms after third request, including a letter advising tank owner of the penalty	$1,000
165:25-1-41	Failure to provide installation information on OCC forms after third request, including a letter advising tank owner of the penalty	$1,000
165:25-1-55	Failure to notify the OCC prior to tank closure	$500
Required Reports		
165:25-1-55	Failure to submit tank closure report within 45 days	$250
165:25-1-48 165:25-3-8 165:29	Failure to submit required reports pertaining to suspected release investigations and/or corrective action activities in a timely manner	$250
	Second offense and thereafter for same case or tracking number	$500
165:25-3-6.28	Failure to maintain SIR analysis on premises no later than the end of the following month	$500
General Leak Detection Requirements		
165:25-3-1	Failure to notify OCC of indicated release	$250
165:25-2-6.20 165:25-2-6.21	Failure to provide adequate release or leak detection for storage tank system (first offense)	$250
	Second offense	$500
	Third offense	$1,000
165:25-2-6.20 165:25-3-6.21	Failure to use an approved method of release or leak detection method for tanks	$250
165:25-2-55.1 165:25-3-6.29	Failure to use an approved method of release or leak detection monitoring for piping	$250
165:25-3-6.23	Failure to use a licensed technician for	$250

Rule	Violation	Fine Amount
165:25-3-6.24	mentoring vapor or groundwater wells as required	
165:25-1-53 165:25-3-6.21	Failure to maintain records of release or leak detection monitoring	$250
165:25-1-53	Failure to maintain results of sampling, testing, or monitoring	$250
165:25-1-53 165:25-1-54	Failure to retain records of calibration, maintenance, and/or repair of release or leak detection equipment	$250
165:25-2-40 165:25-3-6.29	Failure to install or test leak detection on pressurized piping	$250
Spill Protection & Overfill Prevention		
165:25-2-39 165:25-1-57	Tank owner/operator accepting delivery into UST without spill protection	$1,000
165:25-2-39 165:25-1-57	Tank owner/operator accepting delivery into UST that does not have overfill prevention	$1,000
165:25-3-7	Failure to report a spill over 25 gallons	$100
165:25-3-70	Failure to investigate a spill over 25 gallons	$100
165:25-3-70	Failure to investigate an spill resulting from overfill	$100
165:25-3-7	Failure to clean up any spill or overfill	$500
Operation & Maintenance of Corrosion Protection		
165:25-2-51	Tank owner/operator accepting delivery into a UST that does not have a required corrosion protection system	$1,000
165:25-2-53 165:25-2-53.1	Failure to properly operate and maintain corrosion protection (first offense)	$150
	Second offense	$500
	Third offense	$1,000
165:25-2-53	Failure to properly and/or timely test corrosion protection	$250
165:25-1-56	Failure to maintain records of cathodic protection installation, repair, inspections or testing	$250
165:25-2-53	Failure to use a qualified cathodic protection tester to certify corrosion protection system operation at least once every 3 years (first offense)	$500
	Second offense	$1,000
165:25-2-53 165:25-2-111	Failure to test cathodic protection system within 6 months of installation or repair	$250

Rule	Violation	Fine Amount
Release Investigation		
165:25-3-7 and 165:25-3-8	Failure to conduct tightness test(s) to investigate suspected leak(s) from the storage tank system as required	**$250**
Temporary & Permanent Closure		
165:25-2-132 165:25-2-133	Failure to operate and maintain corrosion protection in a temporarily closed storage tank system as required	**$500**
165:25-2-133	Failure to provide adequate release or leak detection as required in a temporarily closed storage tank system	**$250**
165:25-2-134	Failure to cap and secure all storage tank related equipment for temporary closure	**$250**
165:25-2-135	Failure to measure for the presence of a release before permanent closure as required	**$500**
165:25-2-138	Failure to maintain proper closure records	**$250**
165:25-2-131 165:25-2-136	Failure to use an OCC licensed UST Remover and/or Remediation Consultant	**$500**
Repairs Allowed		
165:25-2-42 165:25-2-111	Failure to use an OCC licensed UST Installer or repair person for installation or repair as required	**$500**
	Second offense (per owner, not per facility)	**$1,000**
165:25-2-40 165:25-2-111	Failure to perform tightness test on storage tank system after installation or repair	**$300**
165:25-1-54	Failure to maintain repair records for operating life of storage tank	**$250**
Other Violations		
165:15	Misrepresentation of octane level per location	**$500**
	Second offense within one year	**$1,000**
	Third offense – Closure and Hearing	**$5,000**
165:25-1-41 165:25-1-53	Failure to provide records upon request	**$100**
	Second offense or thereafter (per owner, not per facility)	**$500**
Administrative Penalty	Any owner/operator of a storage tank system who fails to comply with any order issued by the Commission for corrective or enforcement actions may be subject, after notice and hearing, to an administrative penalty in an amount as allowed by law.	

[OAR Docket #06-1030; filed 5-22-06]

TITLE 165. CORPORATION COMMISSION CHAPTER 26. ABOVEGROUND STORAGE TANKS

[OAR Docket #06-1031]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 26. [AMENDED]
AUTHORITY:
Oklahoma Corporation Commission; Article IX, §§18, 19 Oklahoma Constitution; 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 et seq.
DATES:
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Superseded rules:
Subchapter 1. General Provisions
Part 5. National Standards and Codes
165:26-1-31. Codes and standards [AMENDED]
Subchapter 2. Installation, Repair and Removal
Part 1. Tank Design, Construction and Location
165:26-2-1.2. Compliance with nationally recognized code of practice and manufacturer's instructions [NEW]
165:26-2-5. Requirements on fill pipes [AMENDED]
Part 3. Secondary Containment
165:26-2-32. Secondary containment [AMENDED]
Part 5. Piping
165:26-2-54. Aboveground storage tank piping materials [AMENDED]
165:26-2-55. Underground piping materials [AMENDED]
165:26-2-56. Installation and monitoring requirements for piping [AMENDED]
Part 13. Miscellaneous Safety Provisions
165:26-2-131. Fencing [AMENDED]
165:26-2-134. Monitoring requirements [AMENDED]
Part 17. Installation of Aboveground Storage Tank Systems
165:26-2-171. Aboveground storage tank system installation [AMENDED]
Subchapter 3. Recordkeeping, Release Prevention, Detection, Investigation and Reporting
Part 5. Spill and Overfill Prevention Requirements
165:26-3-21. General spill and overfill prevention requirements [AMENDED]
Subchapter 8. Requirements For Aboveground Storage Tank Systems Utilized By Marinas
Part 1. General Application And Compliance Provisions
165:26-8-2. Timeframes for registration and compliance with rules [AMENDED]
165:26-8-2.1. Release detection requirements for marinas [NEW]
Part 9. Over-Water Piping Requirements
165:26-8-40. Aboveground piping at marinas [REVOKED]
165:26-8-40.1. Over-water piping at marinas [NEW]
165:26-8-40.2. Installation requirements for over-water piping [NEW]
165:26-8-41. Installation and monitoring requirements for piping [REVOKED]
Part 15. Dispenser Requirements
165:26-8-61. Dispenser hose [AMENDED]
165:26-8-62. Nozzles [AMENDED]
Part 19. Dispensing Procedures
165:26-8-80. Attendants at marinas [AMENDED]
Part 21. Miscellaneous Safety Provisions
165:26-8-86. Required signs [AMENDED]
165:26-8-88. Fire extinguishers [AMENDED]
Approved by governor:
October 6, 2005
Register issue:
23 Ok Reg. 144
Docket number:
05-1300
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
The purpose of this rulemaking is to amend OAC 165:26-1-31 to allow some latitude in the Commission's rules that might not be present in codes and standards incorporated by reference. The rules are amended at OAC 165:26-2-1.2 to require aboveground storage tank owners to comply with national codes of practice or manufacturer's instructions for new tank installation. The rules are amended at OAC 165:26-2-5 to not require a spill bucket if the fill pipe is located within the containment area. The rules are amended at OAC 165:26-2-32 to require aboveground storage tank owners to keep the containment area free of trash, debris and water. The rules are amended at OAC 165:26-2-54 to delete references to the National Fire Protection Association bulletins 30 and 30A. The rules are amended at OAC 165:26-2-55 to require new underground piping to meet certain standards. Rule OAC 165:26-2-56 is amended to strike certain dates for pressurized piping, certain requirements are changed for suction piping, allowing the use of double walled piping and sump sensors in lieu of line tightness testing except for marinas, setting forth requirements for release detection at suction piping. Rule OAC 165:26-2-131 allowing aboveground storage tank owners to forego the fencing requirement if other means of denying access to the tank system is present. Rule OAC 165:26-2-134 is amended to delete the reference to tightness as the sole testing methodology. Rule OAC 165:26-2-171 is amended to require all aboveground storage tanks be tested to manufacturer's instructions. Rule OAC 165:26-3-21 is amended to not require a spill bucket if the fill pipe is located within the containment area. The rules are amended at OAC 165:26-8-2 which strikes requirements for marinas to upgrade their underground piping by a date certain, provides for equipment relocation, and redirects the requirements for dock or pier product to other rules. In addition, OAC 165:26-8-2.1, is a new rule to establish an annual line tightness test to be performed at marinas no later than April 1st of each year. A new rule OAC 165:26-8-40.1 is created to address concerns for over-water piping at marinas. Also, new rule OAC 165:26-8-40.2 is created to address concerns of over-water piping at marinas. Rules OAC 165:26-8-40, and OAC 165:26-8-41 are revoked, refined, and revised in new rules OAC 165:26-8-40.1 over-water piping at marinas, and OAC 165:26-8-40.2 Installation requirements for over-water piping. Rule OAC 165:26-8-61 is amended to allow the coupling of two or more hoses at marinas. Rule OAC 165:26-8-62 is amended by striking the reference to latch open devices. Rule OAC 165:26-8-80 is amended to establish certain requirements for emergency shut-off devices at unattended dispensers. Rule OAC 165:26-8-86 is amended by striking the requirement for two inch (2") letters on required signs. Rule OAC 165:26-8-88 is amended to increase the number of required fire extinguishers at marinas from two to three, and requiring the fire extinguishers to be located within fifty feet instead of one hundred feet of certain facilities.
CONTACT PERSON:
Jeffery P. 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

PART 3. SCOPE OF RULES

165:26-1-23. Citation of rules [RENUMBERED TO 165:26-1-25.1]

~~This Chapter will be known as the Oklahoma Corporation Commission's General Rules and Regulations Governing Aboveground Storage Tanks and are to be cited as OAC 165:26.~~

165:26-1-24. Other standards and regulations [RENUMBERED TO 165:26-1-32]

~~This Chapter is a part of, or is in addition to, any other standards of nationally recognized associations or any other regulations of federal, state, county, city, or local governing bodies.~~

165:26-1-25. Local jurisdiction [RENUMBERED TO 165:26-1-33]

~~Local jurisdictions, including but not limited to municipalities or rural fire districts, are allowed to adopt their own codes regarding aboveground storage tanks as long as they do not conflict with and are at least as stringent as the state's rules. Some local jurisdictions may prohibit aboveground storage tanks through zoning and/or ordinances.~~

PART 4. ADMINISTRATIVE PROVISIONS

165:26-1-25.1. Citation of rules

This Chapter will be known as the Oklahoma Corporation Commission's General Rules and Regulations Governing Aboveground Storage Tanks and are to be cited as OAC 165:26.

165:26-1-29. Notices

Notices, applications and reports may be submitted faxed or sent to: Oklahoma Corporation Commission, Petroleum Storage Tank Division, Jim Thorpe Office Building, Room 241, P.O. Box 52000, Oklahoma City, Oklahoma 73152-2000, (405) 521-4683, or toll free at 1-800-621-5878, fax number (405) 521-~~4549~~ 4945.

165:26-1-30.3. Licensing procedure for aboveground storage tank licensee

(a) Any individual who would like to become an aboveground storage tank licensee must:

(1) Complete an application form prepared by the Commission.

(2) Provide sufficient proof of 2 years' related work experience, and of active participation in the completion of 3 aboveground storage tank handling activities, 2 of which must be installations.

(3) Pass an examination administered by the Commission.

(4) Pay fees for applications, examinations, and licensing according to the schedule provided in OAC 165:5-3-2.

(5) Certify that they will comply with all Commission rules and requirements for aboveground storage tanks.

(b) The Commission shall have the responsibility to deny, suspend, refuse to renew or revoke the license, or reprimand any aboveground storage tank installer who is found guilty of:

(1) The practice of any fraud or deceit in obtaining a license or in performing work pursuant to this Chapter.

(2) Any gross negligence, incompetence or misconduct in installation work performed pursuant to this Chapter.

(3) Knowingly making false statements or signing false statements, certificates or affidavits to the Commission or to clients with the intention to induce payment.

(4) Aiding or assisting another person in violating any provision of this Chapter.

(5) Signing a verification statement for work performed pursuant to this Chapter which was not performed by the aboveground storage tank licensee.

(6) Engaging in dishonorable, unethical or unprofessional conduct of a character likely to deceive, defraud or harm a customer or the public.

(7) ~~Be~~ Being under indictment or convicted for a criminal act.

(c) Prior to any license suspension, revocation, or refusal to renew, the Director of the Petroleum Storage Tank Division shall have the matter investigated and a report made to the Director for consideration. If the Director elects to pursue suspension, revocation, or refusal to renew, the Commission will schedule a hearing before an Administrative Law Judge and the licensee will be officially notified. The burden of substantial evidence rests upon the Petroleum Storage Tank Division.

(d) This Section in no way exempts the aboveground storage tank licensee from having to meet other applicable requirements as set by state and federal statutes and regulations from other state and federal agencies.

(e) Any person who holds an AST license may install or remove AST systems.

165:26-1-30.4. Fees [RENUMBERED TO 165:26-1-70]

~~This Chapter requires the following persons to pay fees according to the schedule set out in 165:5-3-2:~~

~~(1) Owners or operators of all aboveground storage tank systems in use during the fiscal year.~~

~~(2) AST licensees who become licensed pursuant to the provisions of this Chapter.~~

PART 5. ~~NATIONAL~~ STANDARDS AND CODES

165:26-1-31. Codes and standards

(a) Specific references to documents listed below are made throughout the Aboveground Storage Tank Rules. Each of these documents or parts thereof is adopted and incorporated by reference as a standard. In the event these rules are in

conflict with any of the standards set forth below, the provisions of these rules shall prevail. New editions of codes and standards supersede all previous editions. A copy is available for inspection at the Offices of the Petroleum Storage Tank Division during regular business hours.

(1) American National Standards Institute (ANSI) Standards: American Society of Mechanical Engineers (ASME):

(A) Standard B31.3, 1999 2004, "Chemical Plant and Petroleum Refinery Piping".

(B) Standard B31.4, 1998, 2002, "Liquid Transportation Systems for Hydrocarbons, Liquid Petroleum Gas, Anhydrous Ammonia and Alcohols".

(2) American Petroleum Institute (API) Standards:

(A) Recommended Practice 652, "Lining of Aboveground Petroleum Storage Tank Bottoms", Second Edition, April, 1997.

(B) Publication 1628, 1996, "A Guide, The Assessment and Remediation of Underground Petroleum Releases".

(3) American Society for Testing and Materials (ASTM) Standards: Standard E 1739-95, 1995,"Standard Guide for Risk-Based Corrective Action Applied at Petroleum Release Sites".

(4) National Association of Corrosion Engineers (NACE) Standards: Standard Number RP-0169-96, "Control of External Corrosion on Underground or Submerged Metallic Piping Systems".

(5) National Fire Protection Association (NFPA) Standards:

(A) Standard Number 30, 2003, "Flammable and Combustible Liquids Code".

(B) Standard Number 30A, 2003, "Automotive and Marine Service Station Code".

(6) Underwriter's Laboratory (UL) Standards:

(A) Standard UL142, 1987, 2002, "Steel Aboveground Tanks for Flammable and Combustible Liquids".

(B) Standard UL842, 1980, 1999, "Valves for Flammable Fluids".

(7) Environmental Protection Agency and National Water Well Association, 1986, EPA:NWWA (TEGD) "RCRA Groundwater Monitoring Technical Enforcement Guidance Document".

(8) Petroleum Equipment Institute: Publication PEI/RP 200-03, "Recommended Practices for Installation of Aboveground Storage Tank Systems for Motor Vehicle Fueling".

(9) U.S. Environmental Protection Agency Office of Water, 1997, "Drinking Water Advisory: Consumer Acceptability Advice on Health Effects Analysis on Methyl Tertiary-Butyl Ether (MtBE)".

(10) "Spill Prevention, Control and Countermeasure Regulation", 40 CFR 112, April 17, 2003.

(b) The standards set forth in (a) of this Section are also available from the following sources:

(1) American National Standards Institute (ANSI), Thirteenth Floor; 11 West 42nd Street, New York City, New York, 10036; Telephone: (212) 642-4900.

(2) American Society of Mechanical Engineers (ASME), Three Park Ave., 23S2, New York, NY 10016-5990; Telephone (800) 843-2763.

(~~2~~3) American Petroleum Institute (API), Publications and Distribution, 1220 "L" Street, N.W., Washington, D.C. 20005-4070; Telephone (202) 682-8000.

(~~3~~4) American Society for Testing and Materials (ASTM), 100 Bar Harbor Drive, West Conshohocken, Pennsylvania 19428-2959; Telephone (610) 832-9585.

(~~4~~5) National Association of Corrosion Engineers (NACE), 1440 South Creek Drive, Houston, Texas 77084; Telephone(281) 492-0535.

(~~5~~6) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, Massachusetts 02269-9101; Telephone (800) 344-3555.

(~~6~~7) National Groundwater Association (NWWA), 601 Dempsey Road, Westeville, Ohio 43081; Telephone (614) 898-7791.

(~~7~~8) Underwriter's Laboratory (UL), 333 Pfingsten Road, Northbrook, Illinois 60062; Telephone (847) 272-8800, extension 2612.

(~~8~~9) Petroleum Equipment Institute, P.O. Box 2380, Tulsa, Oklahoma, 74101-2380; Telephone (918) 494-9696.

165:26-1-32. Other standards and regulations

This Chapter is a part of, or is in addition to, any other standards of nationally recognized associations or any other regulations of federal, state, county, city, or local governing bodies.

165:26-1-33. Local jurisdiction

Local jurisdictions, including but not limited to municipalities or rural fire districts, are allowed to adopt their own codes regarding aboveground storage tanks as long as they do not conflict with and are at least as stringent as the state's rules. Some local jurisdictions may prohibit aboveground storage tanks through zoning and/or ordinances.

PART 6. FINANCIAL RESPONSIBILITY

165:26-1-36. Financial responsibility

(a) This Subchapter applies to owners and operators of all petroleum aboveground storage tank (AST) systems except as otherwise provided in this Section.

(b) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this Subchapter.

(c) The requirements of this Subchapter do not apply to owners and operators of any AST system described in 165:26-1-22, "Exclusions."

(d) If the owner and operator of a petroleum aboveground storage tank are separate persons, only one person is required

to demonstrate financial responsibility; however, both parties are liable in event of noncompliance.

(e) An owner or operator may satisfy the requirements of this Subchapter by use of the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund. There is a deductible for use of this mechanism and for which compliance may be demonstrated by use of any of the mechanisms listed in 165:26-18-3.

165:26-1-37. Evidence of financial responsibility

Owners and operators of AST systems will provide evidence of financial responsibility through the mechanisms set forth below, or any other mechanism that is pre-approved by the Division Director of the PSTD:

(1) Self insurance
(2) Guarantee
(3) Insurance
(4) Surety bond
(5) Letter of Credit
6) Trust fund or standby trust fund
(7) Securities pledge
(8) Cash or cash equivalent pledge

PART 7. NOTIFICATION AND REPORTING REQUIREMENTS

165:26-1-41. General reporting requirements

The Commission may require owners and operators of aboveground storage tank systems to provide information the Commission deems necessary for the protection of human health, the environment and to assure the safety of people and property. Use of the designated OCC form(s) is required for tank registration, change in ownership, monthly release detection, testing, temporary change in service, permanent closure, or return to service. These forms are available at the OCC website, PST Division webpage: www.occeweb.com follow link to Petroleum Storage Tank Division and link to PST Compliance Forms.

165:26-1-48. Underground line tightness testing

(a) The results of any tank and line tightness testing required by this Chapter in which any part of the tank system tested fails to perform in accordance with the requirements of this Chapter must be reported by the owner and/or operator within 10 days of the testing. The notice shall include:

(1) The types of testing equipment used.
(2) The name of the company performing the test.
(3) The name of the tester performing the test.
(4) The method of testing used.
(5) The results of the test.
(6) The details of steps taken or to be taken by the owner to repair, replace, or remove the tank system.

(b) Hydrostatic line tightness tests must be conducted in accordance with and reported on the prescribed Commission form.

(c) The tester performing line and leak detector tests must certify that the line leak detector is installed properly.

PART 9. RECORDKEEPING

165:26-1-55. Availability of records

(a) Owners and operators of regulated aboveground storage tank systems must cooperate with Commission requests for submission of inventory and monitoring records. All leak detection records, including sampling, testing, inventory and monitoring records must be available for each tank for at least the preceding twelve months. Copies of all records required pursuant to this Chapter shall be kept:

(1) At the facility and available for immediate inspection by the Commission; or
(2) Available for inspection by the Commission upon request.

(b) Failure to have the required records available when requested by the Commission may result in an enforcement action.

(c) The owner may voluntarily forward the required records for compliance inspection monthly to the PSTD. These records will be made electronically available only to the PSTD Fuel Specialist, who will have all necessary records upon arrival at the facility to be inspected. For participants in this program only, records necessary for compliance inspections need not be at the facility.

(d) Release detection records must be maintained on forms specified by the Commission.

(e) When a change in an owner or operator of a petroleum storage tank system occurs, all records required by the Commission must be transferred at no cost to the new owner or operator.

165:26-1-56. Repair records

Owners and operators of regulated aboveground storage tank systems must maintain records that identify the location and nature of the repair, including documentation regarding the repair. These records must be kept for the remaining operating life of the storage tank system.

165:26-1-57. Tank installation, closure and removal records

(a) Owners and operators of aboveground storage tank systems must maintain records regarding the installation for the lifetime of the system; or, at the owner's option, give copies of installation records to the Petroleum Storage Tank Division for retention in the Division's files. Owners who have purchased systems must maintain the installation information if it is available.

(b) Owners and operators of aboveground storage tank systems must maintain records capable of demonstrating compliance with the closure and removal requirements for tanks that are temporarily taken out of service or permanently removed. These closure and removal records must provide the results of any excavation area site assessment required in 165:26-2-214,

"Assessing the site at tank closure or change in service." These results must be maintained for at least 3 years after removal of the tanks and permanent closure of the system in one of the following ways:

(1) By the owner or operator who took the aboveground storage tank system out of service,

(2) By the current owner or operator of the property where the tanks were located, or

(3) By mailing these records to the Commission.

(c) The owner or the owner's representative (as directed by the owner) must submit a report in writing to the Commission within 45 days from the date the tanks are taken out of service or removed. The information must include, but is not limited to, the following:

(1) Owner's name, address, and facility location.

(2) An accurate drawing showing the location of the tank, piping runs, dispensing units, property lines, and any sampling locations.

(3) Disposition of the soil removed from the tank and piping areas.

(4) Disposition of the tanks.

(5) Copies of laboratory reports on all samples collected. The lab reports must show the facility address and sample identification matching code systems used in the closure report. The part of a closure report pertaining to sampling must contain a verification statement signed by the licensed storage tank consultant in supervisory control of the sampling.

(6) An OCC registration form, signed by the owner, showing the tank as permanently removed.

(7) An OCC closure report form with the signature of the Remediation Consultant and AST licensee.

165:26-1-58. Release detection and corrosion protection records

(a) Owners and operators of regulated aboveground storage tank systems must maintain release detection records for a minimum of one year.

(b) Owners and operators of regulated aboveground storage tank systems who use cathodic protection ("CP") must maintain records that demonstrate compliance with the performance standards of this Chapter.

(1) Records must include the original cathodic protection design with drawings or plans depicting all of the CP system components, along with the credentials of the company which designed the system.

(2) Rectifier readings for impressed current systems conducted at least every 60 days.

(3) Results of the last three inspections or CP system tests completed by a corrosion tester.

(c) If external leak detection methods are used, the records must include the dates the monitoring wells were checked, the name of the person performing the inspection, the type of instrument used, and calibration data on the instrument.

165:26-1-59. Spill and overfill records

Owners and operators of aboveground storage tank systems must keep records of spills and overfills for review and inspection by the Commission for a period of 3 years.

165:26-1-60. Piping records

Tank owners must maintain a current map of their underground piping if that information is available to them and update it within 30 days of any changes.

165:26-1-61. Inventory records

(a) Accurate daily inventory records must be maintained and reconciled on all fuel storage tanks for indication of possible leakage from tanks or piping required where, due to the nature of the aboveground storage tank and/or its secondary containment visual inspections are not adequate for purposes of determining whether a leak has occurred. A good example would be a vertical tank that is not raised off the ground, making it impossible to inspect its bottom, and is not sitting on a sound concrete slab within sound secondary containment. The records must be kept at the premises or made available for inspection by the Commission.

(b) At a minimum the, records must include, by product, daily reconciliation between sales, use, receipts, and inventory on hand. If there is more than one system consisting of a tank(s) serving a separate pump(s) or dispenser(s) for any product, the reconciliation must be maintained separately for each tank system.

PART 11. FEES

165:26-1-70. Fees

This Chapter requires the following persons to pay fees according to the schedule set out in 165:5-3-2:

(1) Owners or operators of all aboveground storage tank systems in use during the fiscal year.

(2) AST licensees who become licensed pursuant to the provisions of this Chapter.

SUBCHAPTER 2. ~~INSTALLATION, REPAIR AND REMOVAL~~ GENERAL REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS

PART 1. ~~TANK DESIGN, CONSTRUCTION AND LOCATION~~DESIGN AND INSTALLATION

165:26-2-1. Approved tanks, tank design [RENUMBERED TO 165:26-2-1.3]

~~(a) Only storage tanks designed and listed for aboveground use can be used aboveground. Tanks designed and built for underground use cannot be installed for aboveground use.~~

~~(b) Only installers who have been licensed by the Commission's Petroleum Storage Tank Division can install aboveground tank systems or make modifications to existing~~

~~aboveground tank systems including both aboveground and underground piping.~~

~~(c) Atmospheric tanks, including those incorporating secondary containment, must be built in accordance with recognized standards of design or approved equivalents. Atmospheric tanks must be built, installed and used within the scope of their approval or within the scope of any of the following:~~

~~(1) Underwriters Laboratories Inc., Standard for "Steel Aboveground Tanks for Flammable and Combustible Liquids," UL 142; Standard for "Aboveground Flammable Liquid Tank Systems," UL 2244; Standard for "Steel Inside Tanks for Oil Burner Fuel," UL 80; or Standard for "Insulated Aboveground Tanks for Flammable Liquids," UL 2085.~~

~~(2) American Petroleum Institute Standard No 650, "Welded Steel Tanks for Oil Storage," eighth edition.~~

~~(3) American Petroleum Institute Specifications 12B, "Bolted Tanks for Storage of Production Liquids," twelfth edition; 12D, "Field Welded Tanks for Storage of Production Liquids," eighth edition; or 12F, "Shop Welded Tanks for Storage of Petroleum Liquids," seventh edition.~~

~~(d) Fuel shall not be dispensed from the tank by either gravity flow or pressurization of the tank.~~

~~(e) All openings shall be located above the maximum liquid level of the aboveground tank on tanks installed after August 18, 2000.~~

165:26-2-1.1. Aboveground storage tank installation

All tanks, piping, and associated equipment used in conjunction with a AST installation shall be installed by personnel possessing appropriate skills, experience, and required Commission license to complete the installation in accordance with recognized industry standards and this Chapter. An AST licensee must be present at all times during the installation.

165:26-2-1.2. Compatibility

Owners and operators of all aboveground storage tank systems must use aboveground tanks, piping, ancillary equipment, and containment systems that are made of or lined with materials which are compatible with the substance stored in the system. Fiberglass reinforced plastic tanks are not allowed.

165:26-2-1.3. Approved tanks, tank design

(a) Only storage tanks designed and listed for aboveground use can be used aboveground. Tanks designed and built for underground use cannot be installed for aboveground use.

(b) Only installers who have been licensed by the Commission's Petroleum Storage Tank Division can install aboveground tank systems or make modifications to existing aboveground tank systems including both aboveground and underground piping.

(c) Atmospheric tanks, including those incorporating secondary containment, must be built in accordance with recognized standards of design or approved equivalents. Atmospheric tanks must be built, installed and used within the scope of their approval or within the scope of any of the following:

(1) Underwriters Laboratories Inc., Standard for "Steel Aboveground Tanks for Flammable and Combustible Liquids," UL 142; Standard for "Aboveground Flammable Liquid Tank Systems," UL 2244; Standard for "Steel Inside Tanks for Oil Burner Fuel," UL 80; or Standard for "Insulated Aboveground Tanks for Flammable Liquids," UL 2085.

(2) American Petroleum Institute Standard No 650, "Welded Steel Tanks for Oil Storage," eighth edition.

(3) American Petroleum Institute Specifications 12B, "Bolted Tanks for Storage of Production Liquids," twelfth edition; 12D, "Field Welded Tanks for Storage of Production Liquids," eighth edition; or 12F, "Shop Welded Tanks for Storage of Petroleum Liquids," seventh edition.

(d) Fuel shall not be dispensed from the tank by either gravity flow or pressurization of the tank.

(e) All openings shall be located above the maximum liquid level of the aboveground tank on tanks installed after August 18, 2000.

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

(a) Fill pipes that enter the top of a tank must terminate within 6 in. (15 centimeters) of the bottom of the tank. Fill pipes should be installed or arranged so that vibration is minimized.

(b) Each fill pipe ~~for liquid storage~~ must be identified by a~~n~~ ~~identification~~ tag or other marking to identify the product for which the tank is used. The marking must be maintained in legible condition throughout the life of the tank ~~installation~~. Color-coding may also be used in addition to marking.

(c) If the fill pipe is located within the containment dike a spill bucket is not required.

165:26-2-5.1. General spill and overfill prevention requirements

(a) Owners and operators of aboveground storage tank systems, as well as those who transport regulated substances to these systems must do everything reasonably possible to ensure that releases due to spilling and overfilling do not occur.

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

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

(d) Tanks installed prior to July 15, 2000 must have a 90 percent alarm or a 95 percent overfill valve.
(e) A 90 percent alarm is required on tanks less than 1,100 gallons that are filled with a delivery nozzle from a delivery vehicle.
(f) Means shall be provided for determining the liquid level in each tank and this means shall be accessible to the delivery operator. Tank filling shall not begin until the delivery operator has determined that the tank has sufficient available capacity (ullage).

165:26-2-8. Installation testing

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

(1) All aboveground storage tanks must be tested to manufacturers instructions. Single-wall tanks shall be air tested, soaped, and inspected for bubbling prior to installation.
(2) Aboveground product piping shall be subjected to a air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions.
(3) All suction product piping must be tested while disconnected from the pumps, and dispensing units. The piping must be subjected to an air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions
(4) All pressurized piping must be tested while connected to tanks, pumps and dispensing units if installed at the time of installation. The piping must be subjected to an air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions.
(5) All piping should be air tested and monitored continuously after the installation and until the completion of the installation or precision tightness test. All underground pressurized and suction piping must have a precision tightness test performed after all paving over the piping has been completed and before the system is placed in operation. The precision tightness test must be performed by a certified tester, and in accordance with manufacturer's instructions. The product line(s) must be hydrostatic tested by a nationally recognized testing device capable of detecting a leak of 0.10 gallons per hour with a test pressure of 50 psi or $1\frac{1}{2}$ times the operating pressure, whichever is greater. The lines must be tested for a minimum of one hour.
(6) Mechanical leak detector(s) must be tested in accordance with manufacturer's instructions.
(7) If an ATG system with electronic line leak detector(s) is installed it must complete a leak detector test in each of the modes in which it is certified as capable of detecting a leak (e.g. 3gph, 0.2gph, and 0.1gph).
(8) A function test must be performed on all line leak detectors at installation.
(9) Containment sumps must be tested after all piping and conduit has been installed by filling sumps with water and monitoring the liquid level for an 8 hour period.
(10) Alternate methods of tank system testing may be approved by the Commission, upon demonstration that the method chosen is effective.

PART 3. SECONDARY CONTAINMENT

165:26-2-32. Secondary containment

(a) Aboveground storage tanks, other than those with double walls as set out in 165:26-2-31, must have secondary containment for the fuels stored in them.
(b) Multiple products stored within the same containment area must be compatible with each other.
(c) If the secondary containment area is open to precipitation, it must be able to contain 110 percent of the capacity of the largest tank plus the volume displaced by other tanks within the containment area.
(d) The secondary containment area must be constructed with materials that are compatible with the product being stored.
(e) The secondary containment area cannot have any uncapped drain that extends outside of the containment.
(f) The secondary containment must be kept intact and free of vegetation, trash, water, and all other items not necessary for fuel storage.
(~~f~~g) Secondary containment can be made from native soil if the soil meets or exceeds the permeability rates listed in Appendix J, or it can be made of concrete or steel. Generally, soil containment may be preferred in open rural areas and concrete in more congested urban areas. In either case the secondary containment must be impermeable for the products stored in the tanks:

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

165:26-2-32.1. Spill Prevention, Control and Countermeasure plan

Owners of aboveground storage tanks must comply with the Spill Prevention Control and Countermeasure (SPCC) rule found in Title 40 of the Code of Federal Regulations (CFR),

Part 112 (Oil Pollution Prevention). If a Spill Prevention Control and Countermeasure (SPCC) plan is required, it must be kept on site.

PART 4. REQUIREMENTS FOR CORROSION PROTECTION SYSTEMS

165:26-2-40. Corrosion protection

(a) Any portion of a tank or its piping system that is in contact with the soil must be protected from corrosion by a properly engineered, installed and maintained cathodic protection system in accordance with recognized standards of design, such as:

(1) American Petroleum Institute Publication 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;

(2) Underwriters Laboratories of Canada ULC-S603.1 M, Standard for Galvanic Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids;

(3) National Association of Corrosion Engineers Standard RP-01-69 (1996 rev.), Recommended Practice, Control of External Corrosion of Underground or Submerged Metallic Piping Systems;

(4) National Association of Corrosion Engineers Standard RP-02-85-95, Recommended Practice, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems; and

(b) Approved or listed corrosion-resistant materials or systems include special alloys, fiberglass reinforced plastic, or fiberglass reinforced plastic coatings.

(c) Piping systems for liquids, both aboveground and underground, that are subject to external corrosion must be protected.

165:26-2-41. Compliance with corrosion protection requirements and manufacturer's specifications

Corrosion protection systems must be operated and maintained in accordance with the manufacturer's instructions and specifications to provide continuous corrosion protection to the metal components of the storage tank system that are routinely in contact with the ground. If any portion of an AST or metallic piping comes in contact with an electrolyte (dirt, sand, gravel, etc.), cathodic protection should be applied to assist in the control of corrosion. The amount of metal in contact with the electrolyte will determine the appropriate selection of cathodic protection; either galvanic anodes or an impressed current system. The selected cathodic protection system will be designed by a corrosion expert or a qualified engineer trained in the field of cathodic protection.

165:26-2-42. Frequency and criteria of inspections and tests

Cathodic protection systems must be inspected for proper operation by a qualified corrosion technician in accordance with the following requirements:

(1) Cathodic protection systems must be tested within 6 months of installation and/or repair, and at least once every 3 years thereafter by a qualified cathodic protection tester, who can demonstrate education and experience in the measurement of cathodic protection of buried or submerged metal piping systems and metal tanks.

(2) Every 60 days impressed current cathodic protection systems must be inspected by the owner or operator (or owners designated representative) to ensure that the equipment is working properly.

(3) The criteria used to determine that cathodic protection is adequate must be consistent with a code of practice developed by a nationally recognized organization, such as the National Association of Corrosion Engineers (NACE).

PART 5. PIPING

165:26-2-53. Valves on piping

(a) If a submersible pump system is used, a UL listed emergency shutoff/shear valve must be installed at each dispensing device. Both the emergency shutoff/shear valve and dispensing device shall be rigidly anchored in place.

(b) If a suction pump-type dispensing device is used, a UL listed, vacuum-actuated shutoff/shear valve~~, with a shear section~~ or equivalent-type valve must be installed directly under each dispensing device. Both the shut off/shear valve and dispensing device shall be rigidly anchored in place. Tanks installed in below-grade vaults are not required to comply with this requirement.

(c) Manual ~~S~~shutoff and check valves must be equipped with a pressure-relieving device that will relieve the pressure generated by thermal expansion back to the tank.

(d) Each outlet connection to an aboveground tank through which liquid can normally flow must be provided with an internal or an external emergency fire valve located as close as practical to the shell of the tank or submerged pump.

(e) An anti-siphon or solenoid valve must be installed on each supply line according to manufacturer guidance and recognized industry standards.

(f) A manual shut off or ball valve must be installed on each supply line according to manufacturer guidance and recognized industry standards.

(~~e~~g) All valves must meet the construction criteria of 165:26-2-54.

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

(a) The design, fabrication, assembly, test and inspection of the piping system from the fuel tank to the fuel dispensers must be in accordance with ~~NFPA 30, NFPA 30A, and~~ the piping manufacturers installation recommendations and instructions.

(b) Pipes, valves, faucets, couplings, flexible connectors, fittings and other pressure-containing parts must meet the material specifications and pressure and temperature limitations of ~~ANSI~~ASME B31.3, Petroleum Refinery Piping, or ~~ANSI~~ASME B31.4, Liquid Petroleum Transportation Piping Systems. Materials must be designed to specifications embodying recognized engineering principles, and be compatible with the fluid service.

(c) Nodular iron must conform to ASTM A 395 Ferritic Ductile Iron Pressure-Retaining Castings for Use at Elevated Temperatures.

(d) Valves at storage tanks and their connections to the tank must be of steel or nodular iron. Low melting point materials such as aluminum, copper, brass or non-ductile material such as cast iron may be used in aboveground piping provided that they are located downstream of an approved steel or nodular iron emergency valve that has been installed and located as close as practical to the shell of the tank or submerged pump.

(e) Valves at storage tanks may be other than steel or nodular iron if the valves are installed internal to the tank. Where installed external to the tank, the material must have a ductility and melting point comparable to steel or nodular iron so as to withstand reasonable stresses and temperatures involved in fire exposure or be protected by materials having a fire resistance rating of not less than 2 hours.

(f) Low melting point materials such as aluminum, copper, and brass, and materials that soften on fire exposure such as plastics, or non-ductile material such as cast iron may be used underground for all liquids within the pressure and temperature limits of ANSI B31, American National Standard Code for Pressure Piping. If these materials are used outdoors in aboveground piping systems handling Class I or Class II liquids, or within buildings handling any liquid, they must be either:

(1) Resistant to damage by fire,

(2) Located so that any leakage resulting from the failure will not unduly expose persons, important buildings, or structures,

(3) Located where leakage can readily be controlled by operation of an accessible remotely located valve(s), or

(4) Located pursuant to 165:26-2-54(d).

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

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

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

165:26-2-55. Underground piping materials

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

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

(1) Non-metallic;

(2) Double-walled;

(3) A tracer locator wire must be installed in all piping trenches; and

(4) Dispenser sumps must be installed and monitored with sensors as per ~~165:26-2-56~~ 165:26-3-20.2.

(5) Piping transition sumps must be installed and monitored with sensors if the interstice area of connecting piping cannot be connected in an approved manner.

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

(c) Existing facilities that have metallic or single-walled nonmetallic piping and are relocating, or removing and replacing a fuel island must install dispenser sumps with sensors as per ~~165:26-2-56~~ 165:26-3-20.2. Any additions to the metallic piping must be nonmetallic single or double-walled piping. ~~However, suction piping will have to be upgraded before the deadline dates established for the various facilities.~~

(d) Existing facilities that are replacing dispensers where the fuel islands are not being relocated, removed or replaced may add to the existing piping using the same piping material. Dispenser sumps do not have to be installed. ~~However, suction piping will have to be upgraded before the deadline dates established for the various facilities.~~

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

(f) Existing facilities that are replacing aboveground storage tanks may re-use single walled non-metallic piping.

(g) Existing facilities that are replacing a tank must replace underground steel piping if it has not been cathodically protected.

165:26-2-56. Installation and monitoring requirements for piping [AMENDED AND RENUMBERED TO 165:26-3-20.2]

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

~~(1) **Pressurized piping.**~~

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

~~(B) New installations and facilities replacing a piping system after July 15, 2002 must have non-metallic double-walled piping, sumps under all dispensers and transition sumps if applicable. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.~~

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

~~(D) Underground pressure piping from a master dispenser to a satellite dispenser must be designed and installed so that the satellite piping is tested by the automatic line leak detector. An annual line tightness test is required on the satellite underground piping.~~

~~(2) **Suction piping.** Installations and all suction systems upgraded before the deadline date established for the various facilities must have non-metallic double walled piping, sumps under all suction pumps and transition sumps if applicable. Sensors must be installed in each sump. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.~~

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

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

~~(i) Methods which alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or by triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 psi line pressure within 1 hour.~~

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

~~(iii) Automatic line leak detectors installed on or after September 22, 1991 must be capable of detecting the leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.~~

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

~~(B) **Sump sensors.**~~

~~(i) Sump sensors, floats or similar mechanical devices at each dispenser, transition and tank sump may be used in lieu of annual line tightness testing.~~

~~(ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.~~

~~(C) **Electronic line leak detection.** A certified electronic line leak detector may be used in lieu of an automatic mechanical line leak detector and annual tightness test only if:~~

~~(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and~~

~~(ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and~~

~~(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually; and~~

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

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

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

~~(B) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.~~

165:26-2-57. Commission-approved alternative methods [RENUMBERED TO 165:26-3-20.3]

~~(a) Any other type of release detection method, or combination of methods, may be used if:~~

~~(1) The method can detect a 0.2 gallon per hour leak rate or a release of 130 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or~~

~~(2) The owner can demonstrate that the method proposed can detect a release as effectively as any of the methods allowed in this Subchapter. In comparing methods, the Commission will consider the size of release that the method can detect and the frequency and reliability with which it can be detected.~~

~~(3) Only Third Party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), as evidenced by their posting on the NWGLDE Web Site (nwglde.org), will be accepted.~~

~~(b) The Commission may impose additional conditions on the use of any alternative methods as it deems necessary to protect the public health and safety and the environment.~~

PART 13. MISCELLANEOUS SAFETY PROVISIONS

165:26-2-131. Fencing

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

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

(c) Tanks are not required to be enclosed within a fence if the property on which the tanks are located already has a perimeter security fence.

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

165:26-2-134. Monitoring requirements [AMENDED AND RENUMBERED TO 165:26-3-20.1]

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

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

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

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

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

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

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

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

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

PART 15. ELECTRICAL

165:26-2-151. Electrical requirements

(a) All electrical work must be installed by a state or federally licensed electrical contractor.

(b) All electrical wiring and electrical utilization equipment must be of a type specified by and must be installed in accordance with NFPA 70, National Electrical Code.

(c) All electrical wiring and electrical utilization equipment must be suitable for the locations in which they are installed.

(d) Refer to the NFPA 30A regulations for the table on Electrical Equipment Classified Areas - Motor Fuel Dispensing Facilities. This table should be used to delineate and classify areas for the purpose of installation of electrical wiring and electrical utilization equipment. The designation of classes and divisions of classified locations is defined in Chapter 5, Article 500, of NFPA 70, National Electrical Code.

(e) Electrical wiring and electrical utilization equipment that is integral with the dispensing hose or nozzle must be suitable for use in Class I, Division 1 classified locations.

(f) Where Class I liquids are stored, handled, or dispensed, electrical wiring and electrical utilization equipment must be designed and installed in accordance with the requirements for class I Division 1 or 2 classified locations, as set forth in Table as in (d) above and in NFPA 70, National Electrical Code.

(g) Clearly identified and easily accessible switch(es) or circuit breaker(s) must be provided at a location remote from dispensing devices, including remote pumping systems, to shut off the power to all dispensing devices in the event of an emergency.

(h) Electrical components for dispensing liquids must be installed according to the guidelines established in Electrical Installations of NFPA 30A. All electrical equipment must be installed and used in accordance with the requirements of NFPA 70, National Electrical Code, as it applies to wet, damp, and hazardous locations.

(i) Electrical equipment that was installed in compliance with an earlier state or national code will not ~~be required to change~~ require modification unless the equipment is hazardous to people or property.

PART 17. INSTALLATION OF ABOVEGROUND STORAGE TANK SYSTEMS [REVOKED]

165:26-2-171. Aboveground storage tank system installation [AMENDED AND RENUMBERED TO 165:26-2-8]

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

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

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

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

~~(2) Aboveground product piping shall be subjected to a air test of at least 50 psi. The test must have a duration of not less than 60 minutes. All piping joints must be~~

~~soaped while the system is under pressure, in order to detect any possible leaks. The interstice area of double-wall piping must be tested according to the manufacturer's instructions.~~

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

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

~~(5) All piping should be air tested and monitored continuously after the installation and until the completion of the installation or precision tightness test. All underground pressurized and suction piping must have a precision tightness test performed after all paving over the piping has been completed and before the system is placed in operation. The precision tightness test must be performed by a certified tester, and in accordance with manufacturer's instructions. The product line(s) must be hydrostatic tested by a nationally recognized testing device capable of detecting a leak of 0.10 gallons per hour with a test pressure of 50 psi or $1\frac{1}{2}$ times the operating pressure, whichever is greater. The lines must be tested for a minimum of one hour.~~

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

~~(7) If an ATG system with electronic line leak detector(s) is installed it must complete a leak detector test in each of the modes in which it is certified as capable of detecting a leak (e.g. 3gph, 0.2gph, and 0.1gph).~~

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

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

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

165:26-2-172. Compatibility [RENUMBERED TO 165:26-2-1.2]

~~Owners and operators of all aboveground storage tank systems must use aboveground tanks, piping, ancillary equipment, and containment systems that are made of or lined with materials which are compatible with the substance stored in the system. Fiberglass reinforced plastic tanks are not allowed.~~

PART 21. REMOVAL AND CLOSURE OF ABOVEGROUND STORAGE TANK SYSTEMS

165:26-2-210. Tank removal and closure

(a) Owners and Operators of all aboveground storage tank systems must notify the Petroleum Storage Tank Division at least 14 days prior to the removal or permanent closure of aboveground storage tanks and/or lines. If events require a change in the date of removal, the Division shall be given 48 hours notice of the new date.

(b) An authorized agent of the Commission may be present to observe the removal and to inspect the closed tank system and the surrounding environment prior to backfilling.

(c) Tanks and lines must be removed upon closure unless the Commission grants a variance.

(d) All aboveground storage tanks must be removed by an AST licensee.

(e) Any company that removes aboveground storage tank systems must have an AST licensee on the job site during removal.

165:26-2-212.1. Requirements for returning to service

(a) A tightness test must be completed on the underground portion of out of service systems if more than 12 months have elapsed since the last tightness test.

(b) Systems out of service for more than 12 months are required to meet all the requirements of this Chapter.

165:26-2-215. Requirements for returning to service [RENUMBERED TO 165:26-2-212.1]

~~(a) A tightness test must be completed on the underground portion of out of service systems if more than 12 months have elapsed since the last tightness test.~~

~~(b) Systems out of service for more than 12 months are required to meet all the requirements of this Chapter.~~

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

PART 3. RECORDKEEPING [REVOKED]

165:26-3-11. Availability of records [RENUMBERED TO 165:26-1-55]

~~(a) Owners and operators of regulated aboveground storage tank systems must cooperate with Commission requests for submission of inventory and monitoring records. All leak detection records, including sampling, testing, inventory and monitoring records must be available for each tank for at least the preceding twelve months. Copies of all records required to be kept pursuant to this Chapter shall be kept:~~

~~(1) At the facility and available for immediate inspection by the Commission; or~~

~~(2) Available for inspection by the Commission upon request.~~

~~(b) Failure to have the required records available when requested by the Commission may result in an enforcement action.~~

~~(c) The owner may voluntarily forward the required records for compliance inspection monthly to the PSTD. These records will be made electronically available only to the PSTD Fuel Specialist, who will have all necessary records upon arrival at the facility to be inspected. For participants in this program only, records necessary for compliance inspections need not be at the facility.~~

~~(d) Release detection records must be maintained on forms specified by the Commission.~~

~~(e) When a change in an owner or operator of a petroleum storage tank system occurs, all records required by the Commission must be transferred at no cost to the new owner or operator.~~

165:26-3-12. Repair records [AMENDED AND RENUMBERED TO 165:26-1-56]

~~Owners and operators of regulated aboveground storage tank systems must maintain records which identify the location and nature of the repair, including documentation regarding the repair. These records must be kept for the remaining operating life of the storage tank system. "Repairs" are defined as work done to restore a storage tank system component that has failed causing a release of fuel from the system.~~

165:26-3-13. Tank installation, closure and removal records [AMENDED AND RENUMBERED TO 165:26-1-57]

~~(a) Owners and operators of aboveground storage tank systems must maintain records regarding the installation for the lifetime of the system; or, at the owner's option, give copies of installation records to the Petroleum Storage Tank Division for retention in the Division's files. Owners who have purchased systems must maintain the installation information if it is available.~~

~~(b) Owners and operators of aboveground storage tank systems must maintain records capable of demonstrating compliance with the closure and removal requirements for tanks that are temporarily taken out of service or permanently removed. These closure and removal records must:~~

~~(1) Provide the results of any excavation area site assessment required in 165:26-2-214, "Assessing the site at tank closure or change in service." These results must be maintained for at least 3 years after removal of the tanks and permanent closure of the system in one of the following ways:~~

~~(A) By the owner or operator who took the aboveground storage tank system out of service,~~

~~(B) By the current owner or operator of the property where the tanks were located, or~~

~~(C) By mailing these records to the Commission.~~

~~(c) The owner or the owner's representative (as directed by the owner) must submit a report in writing to the Commission within 45 days from the date the tanks are taken out of service or removed. The information must include, but is not limited to, the following:~~

~~(1) Owner's name, address, and facility location.~~

~~(2) An accurate drawing showing the location of the tank, piping runs, dispensing units, property lines, and any sampling locations.~~

~~(3) Disposition of the soil removed from the tank and piping areas.~~

~~(4) Disposition of the tanks.~~

~~(5) Copies of laboratory reports on all samples collected. The lab reports must show the facility address and sample identification matching code systems used in the closure report. The part of a closure report pertaining to sampling must contain a verification statement signed by the licensed storage tank consultant in supervisory control of the sampling.~~

165:26-3-14. Release detection and corrosion protection records [RENUMBERED TO 165:26-1-58]

~~(a) Owners and operators of regulated aboveground storage tank systems must maintain release detection records for a minimum of one year.~~

~~(b) Owners and operators of regulated aboveground storage tank systems who use cathodic protection ("CP") must maintain records that demonstrate compliance with the performance standards of this Chapter.~~

~~(1) Records must include the original cathodic protection design with drawings or plans depicting all of the CP system components, along with the credentials of the company which designed the system.~~

~~(2) Rectifier readings for impressed current systems conducted at least every 60 days.~~

~~(3) Results of the last three inspections or CP system tests completed by a corrosion technician.~~

~~(c) If external leak detection methods are used, the records must include the dates the monitoring wells were checked, the name of the person performing the inspection, the type of instrument used, and calibration data on the instrument.~~

165:26-3-15. Spill and overfill records [RENUMBERED TO 165:26-1-59]

~~Owners and operators of aboveground storage tank systems must keep records of spills and overfills for review and inspection by the Commission for a period of 3 years.~~

165:26-3-16. Piping records [AMENDED AND RENUMBERED TO 165:26-1-60]

~~Tank owners should must maintain a current map of their underground piping if that information is available to them and update it within 30 days of any changes.~~

165:26-3-17. Underground line tightness testing [RENUMBERED TO 165:26-1-48]

~~(a) The results of any tank and line tightness testing required by this Chapter in which any part of the tank system tested fails to perform in accordance with the requirements of this Chapter must be reported by the owner and/or operator within 10 days of the testing. The notice shall include:~~

~~(1) The types of testing equipment used.~~

~~(2) The name of the company performing the test.~~

~~(3) The name of the tester performing the test.~~

~~(4) The method of testing used.~~

~~(5) The results of the test.~~

~~(6) The details of steps taken or to be taken by the owner to repair, replace or remove the tank system.~~

~~(b) Hydrostatic line tightness tests must be conducted and reported on the prescribed Commission form.~~

~~(c) The tester performing line and leak detector tests must also certify that the line leak detector is installed properly.~~

165:26-3-18. Inventory records [RENUMBERED TO 165:26-1-61]

~~(a) Accurate daily inventory records must be maintained and reconciled on all Class I liquids and diesel fuel storage tanks for indication of possible leakage from tanks or piping required where, due to the nature of the aboveground storage tank and/or its secondary containment visual inspections are not adequate for purposes of determining whether a leak has occurred. Good examples would be a vertical tank that is not raised off the ground, making it impossible to inspect its bottom, and is not sitting on a sound concrete slab within sound secondary containment; or where a system has underground pipe that is not double walled with interstitial sensors to detect leaks. The records must be kept at the premises or made available for inspection by the Commission.~~

~~(b) At a minimum the, records must include, by product, daily reconciliation between sales, use, receipts, and inventory on hand. If there is more than one system consisting of a tank(s) serving a separate pump(s) or dispenser(s) for any product, the reconciliation must be maintained separately for each tank system.~~

PART 4. RELEASE DETECTION

165:26-3-19. General monitoring requirements

Tanks must be monitored at least every 30 days for releases using one of the methods or combinations of methods listed in this Chapter.

165:26-3-20. General release detection methods and devices

(a) Owners and operators of new and existing aboveground storage tank systems must use a release detection method, or a combination of release detection methods, that is:

(1) Capable of detecting a release of regulated substances from any portion of the aboveground storage tank system that routinely contains product.

(2) Designed, installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running conditions.

(3) Capable of meeting the performance requirements of this Chapter, with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer.

(4) Sampled, tested, or checked for a release at least once every 30 days.

(b) If one of the external release detection methods in this Chapter is used, the owner of a new aboveground storage tank system must perform a necessary investigation to ensure proper operation of the release detection method.

(c) Owners and operators of all new aboveground storage tank systems must use one of the release detection methods, or a combination of methods, set forth in this Chapter. The owner or operator must notify the Commission in writing, at least 30 days after bringing a new system into operation, of the type of release detection method or combination of methods used at the new facility.

(d) Owners and/or operators must keep all written manufacturer and installer performance specifications and the manner in which those specifications are determined.

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

165:26-3-20.1. Monitoring requirements for aboveground tanks and aboveground piping

One of the following methods must be used:

(1) Visual Monitoring

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

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

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

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

(E) Visual inspections are not adequate where due to the nature of the aboveground storage tank and/or its secondary containment it cannot be determined whether a leak has occurred. A good example would be a vertical tank that is not raised off the ground, making it impossible to visually inspect its bottom, and is not sitting on a sound concrete slab within sound secondary containment.

(2) Monthly Inventory Reconciliation

(A) Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(i) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount remaining in the tank are recorded each operating day.

(ii) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest one-eighth inch (1/8").

(iii) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery.

(iv) Deliveries are made through a drop tube that extends to within 6 inches (6") of the tank bottom.

(v) Product dispensing is metered and recorded within an accuracy of 6 cubic inches for every 5 gallons of product withdrawn.

(vi) The measurement of any water level in the bottom of the tank is made to the nearest one-eighth inch (1/8") at least once a month.

(vii) Use of OCC Monthly Inventory Reconciliation Form or an electronic equivalent is required.

(B) Compliance with API 1621, where applicable, will be deemed compliance with this Section.

(3) Interstitial monitoring Interstitial monitoring can be used for double walled aboveground storage tank systems. The sampling or testing method must detect a release monthly in accordance with the manufacturer instructions through the inner wall in any portion of the tank that routinely contains product.

(4) Automatic tank gauging systems

(A) Automatic tank gauging systems (ATGs) that test for the loss of product must conduct an automatic product level monitor test at a minimum frequency of once every 30 days and be capable of detecting at least a 0.2 gallon per hour leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.

(B) Automatic tank gauging systems (ATG's) must be third party certified for the size and quantity of the tank. Only third party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), as evidenced by their posting on the NWGLDE Web Site, will be accepted (nwglde.org).

165:26-3-20.2. Installation and monitoring requirements for underground piping

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

(1) Pressurized piping

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

(B) New installations must have at least one sump sensor, float or similar mechanical device for each tank system, located at the bottom of the lowest piping gradient sump. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.

(C) Underground pressure piping from a master dispenser to a satellite dispenser must be designed and installed so that the satellite piping is tested by the automatic line leak detector. An annual line tightness test is required on the satellite underground piping.

(2) Suction piping - New installations must have at least one sump sensor, float or similar mechanical device for each tank system, located at the bottom of the lowest piping gradient sump. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs.

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

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

(i) Methods which alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or by triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 psi line pressure within 1 hour.

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

(iii) Automatic line leak detectors installed on or after September 22, 1991 must be capable of detecting the leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05.

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

(B) Sump sensors

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

(ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.

(C) Electronic line leak detection - A certified electronic line leak detector may be used in lieu of an automatic mechanical line leak detector and annual tightness test only if:

(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and

(ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and

(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually; and

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

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

(A) Sump Sensors

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

(ii) The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.

(B) Annual Line Tightness Testing - A hydrostatic line tightness test must be performed annually by a certified tester.

165:26-3-20.3. Commission-approved alternative methods

(a) Any other type of release detection method, or combination of methods, may be used if:

(1) The method can detect a 0.2 gallon per hour leak rate or a release of 130 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

(2) The owner can demonstrate that the method proposed can detect a release as effectively as any of the methods allowed in this Subchapter. In comparing methods, the Commission will consider the size of release that the method can detect and the frequency and reliability with which it can be detected; or

(3) Only Third-Party certifications that have been reviewed and approved by the National Work Group on Leak Detection Evaluations (NWGLDE), as evidenced by their posting on the NWGLDE Web Site (nwglde.org), will be accepted.

(b) The Commission may impose additional conditions on the use of any alternative methods as it deems necessary to protect the public health and safety and the environment.

PART 5. SPILL AND OVERFILL PREVENTION REQUIREMENTS [REVOKED]

165:26-3-21. General spill and overfill prevention requirements [AMENDED AND RENUMBERED TO 165:26-2-5.1]

~~(a) Owners and operators of aboveground storage tank systems, as well as those who transport regulated substances to these systems must do everything reasonably possible to ensure that releases due to spilling and overfilling do not occur.~~

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

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

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

~~(e) A 90 percent alarm is required on tanks less than 1,100 gallons that are filled with a delivery nozzle from a delivery vehicle.~~

~~(f) Means shall be provided for determining the liquid level in each tank and this means shall be accessible to the delivery operator. Tank filling shall not begin until the delivery operator has determined that the tank has sufficient available capacity (ullage).~~

165:26-3-22. Spill Prevention, Control and Countermeasure Plan [RENUMBERED TO 165:26-2-32.1]

~~Owners of aboveground storage tanks must comply with the Spill Prevention Control and Countermeasure (SPCC) rule found in Title 40 of the Code of Federal Regulations (CFR), Part 112 (Oil Pollution Prevention). If a Spill Prevention Control and Countermeasure (SPCC) plan is required, it must be kept on site.~~

PART 14. RELEASE REPORTING REQUIREMENTS

165:26-3-77. Release reporting

(a) The reporting requirements of this Part do not relieve the owner or operator of the responsibility to take necessary corrective action pursuant to OAC 165:29, the Commission's Rules on Remediation, to protect the public health, safety and the environment, including the containment and cleanup of spills and overfills that are not required to be reported by this Chapter.

(b) All aboveground storage tank system owners, operators, their employees or agents, or transporters must report any of the following events to the Commission by telephone at (405)

521-6575 or toll free at 1-888-621-5878 (if after hours or on weekends or holidays, a detailed message must be left on the Commission's answering machine) within 24 hours of knowing of any of the following situations. Owners or operators must provide written confirmation to follow within 20 days in accordance with the requirements established in this Chapter. Qualifying events include:

(1) The discovery of released regulated substances at the aboveground storage tank system facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water);

(2) Any unusual operating conditions observed by owners and/or operators, such as the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the aboveground storage tank system, or an unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced.

(A) In the case of inventory control, two consecutive months where the Total Gallons Over/Short is greater than the "Leak Check" (1 percent of product sales plus 130 gallons) must be reported to the Commission within 24 hours of the owner or operator knowing the inventory control results.

(B) Any AST system failure from a third party-certified Statistical Inventory Reconciliation (SIR) analysis must be reported to the Commission within 24 hours of the owner or operator knowing of the failure. An immediate investigation into the cause of the failed report must be conducted and results reported to the Commission within 7 days.

(C) An "Inconclusive" report from an SIR monthly analysis must be reported within 24 hours of the owner or operator knowing of the report. An Inconclusive means that the AST system has failed to meet leak detection requirements for that month.

(3) An unusual level of vapors on the site that is of unknown origin. A vapor monitor well reading in excess of 4,000 units/ppm from a pit containing gasoline tanks, and in excess of 1,500 units/ppm for a pit containing diesel or both gasoline and diesel, must be reported to the Commission within 24 hours of the owner or operator or any of his or her employees at the facility knowing the monitoring results. Within 10 days, the owner or operator must submit to the Commission all vapor monitoring well data, including background data, for the last 12 months. Upon examination of the submitted data, the Commission will advise the owner or operator what action, if any, he or she needs to take. When a 1,500 units/ppm reading is reported, the Petroleum Storage Tank Division will perform a preliminary investigation at its own expense prior to opening a cleanup case; if it finds no reason to open a case, the owner or operator is not liable for any expenses.

(4) An increase in vapor levels of 500 units/ppm above background or historical levels detected by monthly monitoring, even though below the 24-hour reporting level, must be reported if the increase does not correct itself in the second month of monitoring. It must be reported to the Commission within 24 hours of the owner or operator or any of his or her employees at the facility knowing the monitoring results.

(5) Monitoring results from a release detection method required by this Chapter that indicate a release may have occurred unless the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.

(c) While aboveground releases of petroleum of less than 25 gallons need not be reported, they must be recorded by the owner or operator and contained and cleaned up immediately. All of the following releases must be reported by telephone within 24 hours of discovery, with a written confirmation to follow within 20 days in accordance with the requirements established in this Chapter:

(1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.

(2) Any aboveground release of petroleum greater than 25 gallons.

(3) Any aboveground release of petroleum that is less than 25 gallons, but cannot be contained and cleaned up within 24 hours.

(d) All owners and/or operators of aboveground storage tank systems must maintain records of all reportable and nonreportable events listed in this section sufficient to permit adequate inspection and review by the Commission. These records must be kept for 3 years following the date of the event.

(e) If any of the possible, probable or definite release conditions in subsections (a) through (c) above are not reported within 24 hours, the owner or operator must be prepared to provide documentation or evidence that would reasonably indicate his or her knowledge of release conditions or monitoring results was delayed.

PART 15. REQUIREMENTS FOR CORROSION PROTECTION SYSTEMS [REVOKED]

165:26-3-80. Corrosion protection [RENUMBERED TO 165:26-2-40]

~~(a) Any portion of a tank or its piping system that is in contact with the soil must be protected from corrosion by a properly engineered, installed and maintained cathodic protection system in accordance with recognized standards of design, such as:~~

~~(1) American Petroleum Institute Publication 1632, Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems;~~

~~(2) Underwriters Laboratories of Canada ULC-S603.1 M, Standard for Galvanic Corrosion Protection Systems for Steel Underground Tanks for Flammable and Combustible Liquids;~~

~~(3) Steel Tank Institute Standard No. sti P3®, Specification and Manual for External Corrosion Protection of Underground Steel Storage Tanks;~~

~~(4) National Association of Corrosion Engineers Standard RP-01-69 (1996 rev.), Recommended Practice, Control of External Corrosion of Underground or Submerged Metallic Piping Systems;~~

~~(5) National Association of Corrosion Engineers Standard RP-02-85-95, Recommended Practice, Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems; and~~

~~(6) Underwriters Laboratories Inc., Standard for External Corrosion Protection Systems for Steel Underground Storage Tanks, UL 1746, Part 1.~~

~~(b) Approved or listed corrosion resistant materials or systems include special alloys, fiberglass reinforced plastic, or fiberglass reinforced plastic coatings.~~

~~(c) Piping systems for liquids, both aboveground and underground, that are subject to external corrosion must be protected.~~

165:26-3-81. Compliance with corrosion protection requirements and manufacturer's specifications [RENUMBERED TO 165:26-2-41]

~~Corrosion protection systems must be operated and maintained in accordance with the manufacturer's instructions and specifications to provide continuous corrosion protection to the metal components of the storage tank system that are routinely in contact with the ground. If any portion of an AST or metallic piping comes in contact with an electrolyte (dirt, sand, gravel, etc.), cathodic protection should be applied to assist in the control of corrosion. The amount of metal in contact with the electrolyte will determine the appropriate selection of cathodic protection; either galvanic anodes or an impressed current system. The selected cathodic protection system will be designed by a corrosion expert or a qualified engineer trained in the field of cathodic protection.~~

165:26-3-82. Frequency and criteria of inspections and tests [RENUMBERED TO 165:26-2-42]

~~Cathodic protection systems must be inspected for proper operation by a qualified corrosion technician in accordance with the following requirements:~~

~~(1) Cathodic protection systems must be tested within 6 months of installation and/or repair, and at least once every 3 years thereafter by a qualified cathodic protection tester, who can demonstrate education and experience in the measurement of cathodic protection of buried or submerged metal piping systems and metal tanks.~~

~~(2) Every 60 days impressed current cathodic protection systems must be inspected by the owner or operator (or owners designated representative) to ensure that the equipment is working properly.~~

~~(3) The criteria used to determine that cathodic protection is adequate must be consistent with a code of practice developed by a nationally recognized organization, such as the National Association of Corrosion Engineers (NACE).~~

PART 19. RELEASE REPORTING REQUIREMENTS [REVOKED]

165:26-3-191. Release reporting [RENUMBERED TO 165:26-3-77]

~~(a) The reporting requirements of this Part do not relieve the owner or operator of the responsibility to take necessary corrective action pursuant to OAC 165:29, the Commission's Rules on Remediation, to protect the public health, safety and the environment, including the containment and cleanup of spills and overfills that are not required to be reported by this Chapter.~~

~~(b) All aboveground storage tank system owners, operators, their employees or agents, or transporters must report any of the following events to the Commission by telephone at (405) 521-6575 or toll free at 1-888-621-5878 (if after hours or on weekends or holidays, a detailed message must be left on the Commission's answering machine) within 24 hours of knowing of any of the following situations. Owners or operators must provide written confirmation to follow within 20 days in accordance with the requirements established in this Chapter. Qualifying events include:~~

~~(1) The discovery of released regulated substances at the aboveground storage tank system facility or in the surrounding area (such as the presence of free product or vapors in soils, basements, crawlspaces, sewer and utility lines, and nearby surface water);~~

~~(2) Any unusual operating conditions observed by owners and/or operators, such as the unexplained erratic behavior of product dispensing equipment, the sudden loss of product from the aboveground storage tank system, or an unexplained presence of water in the tank, unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced.~~

~~(A) In the case of inventory control, two consecutive months where the Total Gallons Over/Short is greater than the "Leak Check" (1 percent of product sales plus 130 gallons) must be reported to the Commission within 24 hours of the owner or operator knowing the inventory control results.~~

~~(B) Any AST system failure from a third party certified Statistical Inventory Reconciliation (SIR) analysis must be reported to the Commission within 24 hours of the owner or operator knowing of the failure. An immediate investigation into the cause of the failed report must be conducted and results reported to the Commission within 7 days.~~

~~(C) An "Inconclusive" report from an SIR monthly analysis must be reported within 24 hours of the owner or operator knowing of the report. An Inconclusive means that the AST system has failed to meet leak detection requirements for that month.~~

~~(3) An unusual level of vapors on the site that is of unknown origin. A vapor monitor well reading in excess of 4,000 units/ppm from a pit containing gasoline tanks, and in excess of 1,500 units/ppm for a pit containing diesel or both gasoline and diesel, must be reported to the Commission within 24 hours of the owner or operator or any of~~

~~his or her employees at the facility knowing the monitoring results. Within 10 days, the owner or operator must submit to the Commission all vapor monitoring well data, including background data, for the last 12 months. Upon examination of the submitted data, the Commission will advise the owner or operator what action, if any, he or she needs to take. When a 1,500 units/ppm reading is reported, the Petroleum Storage Tank Division will perform a preliminary investigation at its own expense prior to opening a cleanup case; if it finds no reason to open a case, the owner or operator is not liable for any expenses.~~

~~(4) An increase in vapor levels of 500 units/ppm above background or historical levels detected by monthly monitoring, even though below the 24 hour reporting level, must be reported if the increase does not correct itself in the second month of monitoring. It must be reported to the Commission within 24 hours of the owner or operator or any of his or her employees at the facility knowing the monitoring results.~~

~~(5) Monitoring results from a release detection method required by this Chapter that indicate a release may have occurred unless the monitoring device is found to be defective, and is immediately repaired, recalibrated, or replaced, and additional monitoring does not confirm the initial result.~~

~~(c) While aboveground releases of petroleum of less than 25 gallons need not be reported, they must be recorded by the owner or operator and contained and cleaned up immediately. All of the following releases must be reported by telephone within 24 hours of discovery, with a written confirmation to follow within 20 days in accordance with the requirements established in this Chapter:~~

~~(1) All known belowground releases in any quantity; for example, a release resulting from a line broken during an excavation.~~

~~(2) Any aboveground release of petroleum greater than 25 gallons.~~

~~(3) Any aboveground release of petroleum which is less than 25 gallons, but cannot be contained and cleaned up within 24 hours.~~

~~(d) All owners and/or operators of aboveground storage tank systems must maintain records of all reportable and nonreportable events listed in this section sufficient to permit adequate inspection and review by the Commission. These records must be kept for 3 years following the date of the event.~~

~~(e) If any of the possible, probable or definite release conditions in subsections (a) through (c) above are not reported within 24 hours, the owner or operator must be prepared to provide documentation or evidence that would reasonably indicate his or her knowledge of release conditions or monitoring results was delayed.~~

SUBCHAPTER 4. INSPECTIONS, PENALTIES AND FIELD CITATIONS

PART 3. PENALTIES [REVOKED]

165:26-4-10. Penalties [RENUMBERED TO 165:26-4-10]

~~(a) Pursuant to 17 O.S. § 306, any owner or operator of a regulated aboveground storage tank system located within the State who violates any of the provisions of this Chapter may be issued a citation or may be subject to an administrative penalty not to exceed $10,000.00 for each day that the violation continues.~~

~~(b) 17 O.S. § 311 provides that any person who has been determined by the Commission to have violated any provisions of the Storage Tank Regulation Act or any rule promulgated or order issued pursuant to the provisions of the Oklahoma Storage Tank Regulation Act may be held liable for an administrative penalty of not more than $10,000.00 per day of continuing violation and 17 O.S. § 365(H) provides that owners or operators who fail to comply with any order issued by the Commission for corrective or enforcement action may be subject to an administrative penalty not to exceed $25,000.00 per tank per day of violation. Under this Chapter the Manager of Inspection and Compliance may issue citations under the authority of 17 O.S. § 306 and Part 5 of this Subchapter, but only the Commission after notice and hearing may impose a larger fine.~~

PART 7. PENALTIES

165:26-4-21. Penalties

(a) Pursuant to 17 O.S. § 306, any owner or operator of a regulated aboveground storage tank system located within the State who violates any of the provisions of this Chapter may be issued a citation or may be subject to an administrative penalty not to exceed $10,000.00 for each day that the violation continues.

(b) 17 O.S. § 311 provides that any person who has been determined by the Commission to have violated any provisions of the Storage Tank Regulation Act or any rule promulgated or order issued pursuant to the provisions of the Oklahoma Storage Tank Regulation Act may be held liable for an administrative penalty of not more than $10,000.00 per day of continuing violation and 17 O.S. § 365(H) provides that owners or operators who fail to comply with any order issued by the Commission for corrective or enforcement action may be subject to an administrative penalty not to exceed $25,000.00 per tank per day of violation. Under this Chapter the Manager of Inspection and Compliance may issue citations under the authority of 17 O.S. § 306 and Part 5 of this Subchapter, but only the Commission after notice and hearing may impose a larger fine.

SUBCHAPTER 6. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY AIRPORTS OPEN TO THE PUBLIC

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-6-2. Timeframes for registration and compliance with rules

(a) Stationary tanks greater than 110 gallons must be registered with the Petroleum Storage Tank Division of the Corporation Commission.

(b) Airport tank systems must ~~come into~~ have come into full compliance with the rules of this Chapter and subchapters before July 15, 2005~~, though compliance may be required sooner for any part of an existing system which poses a current threat to property, to people, or to the environment~~.

~~(c) All new underground product piping at new facilities and all underground suction piping at existing facilities must be installed or upgraded, before the deadline date of July 15, 2005, in accordance with 165:26-2-55, "Underground piping materials," and with 165:26-2-56, "Installation and monitoring requirements for piping."~~

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

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

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

(a) Tanks that are greater than 110 gallons must be registered with the Petroleum Storage Tank Division of the Commission. The tank and piping system must come in compliance with the rules of this Chapter and Subchapter before July 15, 2007. ~~However,~~ Compliance may be required sooner for any part of a system which poses a threat to property, people, or to the environment.

(b) All new underground piping at existing facilities ~~or upgraded before the deadline date of July 15, 2007,~~ must be installed in accordance with 165:26-2-55, "Underground piping materials," and with ~~165:26-2-56~~ 165:26-3-9, "Installation and monitoring requirements for underground piping."

(c) All dock or pier product piping from the ~~shore~~ shoreline ~~transition sump~~ to the dispensers at new facilities must be installed according to ~~165:26-8-40, "Aboveground piping at marinas," and 165:26-8-41, "Installation and monitoring requirements for piping."~~ 165:26-8-40.1 "Over-water piping at marinas" and 165:26-8-40.2 "Installation requirements for over-water piping".

(d) All dock or pier product piping from the ~~shore~~ shoreline ~~transition sump~~ to the dispensers at existing facilities must be upgraded before the deadline date of July 15, 2007 according to ~~165:26-8-40, "Aboveground piping at marinas," and 165:26-8-41, "Installation and monitoring requirements for piping."~~ 165:26-8-40.1 "Over-water piping at marinas" and 165:26-8-40.2 "Installation requirements for over-water piping".

(e) Temporary tanks may not be used at marinas.

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

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

PART 9. OVER-WATER PIPING REQUIREMENTS

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

~~(a) The design, fabrication, assembly, test and inspection of the piping system from the fuel tank to the fuel dispensers must be in accordance with NFPA 30, NFPA 30A, and the piping manufacturers installation recommendations and instructions. Piping must be listed and approved by the manufacturer for aboveground installations.~~

~~(b) A water tight transition or piping sump must be buried and installed as close as practical to the shore line as a transition from onshore piping to over water piping. A sufficient amount of concrete should be poured over the transition sump to keep it from floating if the sump is installed below the flood plain. There should be a normally closed explosion proof solenoid valve and pressure relief valve installed in each product line inside the transition sump. If a pressure system is used all sump sensors should automatically control the electricity to both the solenoid valve and submerged pump. If a suction system is used the sump sensors should automatically control the electricity to both the solenoid valve and suction pump motor.~~

~~(c) If double wall piping is used it Piping at all hinge locations it must be installed according to the double wall piping manufacturer recommendations. The dock or ramp piping must be designed and installed at least level but preferably with a slope between sumps in order to eliminate any air pockets in the piping and also to insure that any leakage into the interstice piping will drain into the sumps. Due to the constant movement of the water and the floating dock, piping shall be installed with proper support and strain relief in order to eliminate the physical stress on the piping and piping connections. Fuel piping and electrical conduit shall be rigidly attached to the dock before the piping enters the sump area, in order to prevent strain on the entry boots and primary pipe fittings.~~

~~(d) All marina floating docks and pier installations must have steel or double walled piping and either stainless steel or fiberglass clad steel sumps with monitoring sensors that automatically control the electricity to the pumping device and solenoid valves.~~

~~(e) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point shall be installed on each line serving the dock. The breakaway device shall be located where the dock piping will separate from the shore or secured ramp piping. The piping shall be secured at both ends of the breakaway device so that the piping will withstand the forces and pressures exerted upon it.~~

~~(f) All aboveground piping and system components must be protected from being damaged by fire, collision and abrasion.~~

~~(g) All flexible piping installed aboveground on the shore, in the water, or secured to the dock or ramp shall be a metallic ducted flexible double wall system or an approved double wall piping system installed inside a metal conduit or chase.~~

~~(h) All piping installed above the water on the dock shall be installed inside a metal conduit or chase for the purpose of eliminating sagging in the piping thus assuring that any leak in the piping interstice would end up in the sumps.~~

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

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

~~(1) **Pressurized piping.**~~

~~(A) All piping that conveys regulated substances under pressure must be equipped with an automatic mechanical or electronic line leak detector installed and in operation.~~

~~(B) Double walled piping is not required; however, Aboveground dock piping upgraded before the deadline date of July 15, 2007, must have if dock piping is upgraded to double walled piping it must also have and dispenser, piping or transition sumps. Each sump shall be monitored with a sensor, float or similar mechanical device and automatically control the electricity to both the solenoid valve and submerged pump. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs. However, the interstitial piping boot on the piping leaving the piping sump located on shore as in 165:26-8-40(b) must be kept sealed in order to eliminate any leakage from leaving that sump and allowed to enter the dock dispenser or piping sumps.~~

~~(2) **Suction piping.** Double walled piping is not required; however, Aboveground dock piping upgraded before the deadline date of July 15, 2007, must have if dock piping is upgraded to double walled piping it must also have and pump, piping and transition sumps. Each sump shall be monitored with a sensor, float or similar mechanical device at each sump and automatically control the electricity to both the solenoid valve and suction pump motor. The interstitial area of the piping must be open inside the sumps to allow fuel to drain into the sumps in the event that a leak occurs. However, the interstitial piping boot on the piping leaving the piping sump located on shore as in 165:26-8-40(b) must be kept sealed in order to eliminate any leakage from leaving that sump and allowed to enter the dock dispenser or piping sumps.~~

~~(3) **Methods of release detection for pressurized piping.** The method of release detection for pressurized piping must be done in accordance with the following requirements:~~

~~(A) **Automatic mechanical line leak detectors.** Methods which alert the owner and/or operator to the presence of a leak by restricting or shutting off the flow of regulated substances through the piping may be used only if they detect leaks of 3 gallons per hour at 10 psi line pressure within 1 hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements. Automatic mechanical line leak detectors installed on or after September 22, 1991 must be capable of detecting the leak rate with a probability of detection of 0.95 and a probability of false alarm of 0.05. A hydrostatic line tightness test must be done annually by a certified tester in accordance with this Chapter in addition to any other line leak detection method; and~~

~~(B) **Sump sensors.** Sump sensors, floats or similar mechanical devices at each dispenser, piping and transition sump shall also be used in addition to automatic line leak detectors. The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.~~

~~(C) **Alternative to automatic mechanical line leak detector and annual line tightness testing.** A certified electronic line leak detector may be used in lieu of an automatic mechanical line leak detector and annual line tightness test only if:~~

~~(i) The system is capable of detecting and tests for a leak of 3 gallons per hour before or after each operation of the submersible turbine pump; and~~

~~(ii) The system is capable of detecting and tests for a leak of 0.2 gallons per hour at least once every month; and~~

~~(iii) The system is capable of detecting and tests for a leak of 0.1 gallons per hour annually, and the system is tested annually in accordance with manufacturer's specifications.~~

~~(4) **Methods of release detection for suction piping.** The method of release detection for suction piping must be done in accordance with the following requirement: Sump sensors. Each sump shall be monitored with a sensor, float or similar mechanical device and automatically control the electricity to both the solenoid valve and suction pump motor. The sump sensors, floats or other mechanical devices used must be tested annually according to manufacturer's requirements. Sensors must also be checked monthly to insure that they are operational.~~

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

(a) The design, fabrication, assembly, test, and inspection of the piping system from the fuel tank to the fuel dispensers must be in accordance with NFPA 30 and NFPA 30A.

(b) The piping must be installed according to the manufacturers installation recommendations and instructions.

(c) Piping must be listed and approved by the manufacturer for aboveground installations.

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

(a) **Steel piping.**

(1) Piping shall be installed with proper support and strain relief in order to eliminate the physical stress on the piping and piping connections caused by the constant movement of the water and floating dock. Fuel piping and electrical conduit shall be rigidly attached to the dock before the piping enters the sump area, in order to prevent strain on the entry boots and primary pipe fittings.

(2) Steel flex connectors must be used between the shore piping and the piping on the floating structure and between separate sections of the floating structure to allow for movement of the dock and changes in water levels.

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

(4) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each line serving the dock. The breakaway device shall be located where the dock piping will separate from the shore or secured ramp piping. The piping shall be secured at both ends of the breakaway device so that the piping will withstand the forces and pressures exerted upon it.

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

(6) A ball valve must be installed at the shoreline in order to manually shut off the flow of fuel.

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

(8) If the onshore piping is double walled a transition sump is required at the shoreline in order to contain a release from the onshore piping. The transition sump must contain the ball valve and solenoid valve and be rigidly anchored in place.

(b) **Double walled piping.**

(1) Double walled piping must be installed according to the double wall piping manufacturer recommendations.

(2) All double walled piping installed above the water shall be enclosed inside a rigid metal chase or conduit except at joints requiring flexibility. A flexible metal conduit can be used between shore piping and piping on the floating structure or between separate sections of the floating structure to allow for movement of the dock and changes in water levels. Both the rigid and flexible metal chase/conduit must shield the fuel pipe from damage by fire and in itself be fire resistant.

(3) Due to the constant movement of the water and the floating dock, piping shall be installed with proper support and strain relief in order to eliminate the physical stress on the piping and piping connections. Fuel piping and electrical conduit shall be rigidly attached to the dock before the piping enters the sump area, in order to prevent strain on the entry boots and primary pipe fittings.

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

(5) A listed emergency breakaway device designed to retain liquid on both sides of the breakaway point must be installed on each line serving the dock. The breakaway device shall be located where the dock piping will separate from the shore or secured ramp piping. The piping shall be secured at both ends of the breakaway device so that the piping will withstand the forces and pressures exerted upon it.

(6) There must be a normally closed explosion proof solenoid valve with a pressure relief valve installed in each product line at the shoreline.

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

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

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

PART 15. DISPENSER REQUIREMENTS

165:26-8-61. Dispenser hose

Listed hose assemblies must be used to dispense fuel. Where hose length exceeds 18 ft (5.5m), the hose shall be secured so as to protect it from damage, such as a hose reel, and in no case shall the hose exceed 50 ft (15m) in length. ~~Two or more hoses shall not be coupled together.~~

165:26-8-62. Nozzles

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

PART 19. DISPENSING PROCEDURES

165:26-8-80. Attendants at marinas

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

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

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

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

(3) Must be readily accessible to patrons.

(4) Emergency instructions must be conspicuously posted.

PART 21. MISCELLANEOUS SAFETY PROVISIONS

165:26-8-86. Required signs

All marinas must have a sign printed in ~~2 in. (5 cm)~~ $\frac{1}{4}$ to $\frac{1}{2}$ inch text in black or red block capital letters on a white background conspicuously posted and easily readable from the dispensing area which says:

(1) BEFORE FUELING:

(A) Stop all engines and auxiliaries.

(B) Shut off all electricity, open flames and heat sources.

(C) Check all bilges for fuel vapors.

(D) Extinguish all smoking materials.

(E) Close access fittings and openings to prevent fuel vapors from entering enclosed spaces of the vessel.

(2) DURING FUELING:

(A) Maintain nozzle contact with the fill pipe.

(B) Wipe up spills immediately.

(C) Avoid overfilling.

(D) Fuel filling nozzle must be attended at all times.

(3) AFTER FUELING:

(A) Inspect bilges for leakage and fuel odors.

(B) Ventilate until odors are gone.

165:26-8-88. Fire extinguishers

(a) Each marina must be provided with listed fire extinguishers which have a minimum capability of 40 pounds, Class B, Class C.

(b) A minimum of ~~two~~ three extinguishers must be located at the fuel dock and one or more located so they will be within ~~100~~ 50 ft. (~~30~~ 15m) of each pump, dispenser, underground fill pipe opening and lubrication or service room.

(c) Where practical, there should be a frost-proof water hydrant with at least a 5/8" hose on the fuel dock. Piers which extend more than 500 ft. (152 m) in travel distance from shore must have a Class III standpipe installed in accordance with NFPA 14, Standard for the Installation of Standpipe and Hose Systems.

(d) There must be a knife at the fuel dock for quickly cutting mooring lines in an emergency and a push pole for shoving away a boat.

SUBCHAPTER 10. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY RETAIL FACILITIES

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-10-2. Timeframes for registration and compliance with rules

(a) Tanks at retail facilities except marinas that are greater than 110 gallons must be registered with the Petroleum Storage Tank Division of the Commission before January 15, 2001. The tank system must come in compliance with the rules of this Chapter and Subchapter before July 15, 2007. Compliance may be required sooner for any part of an existing system which poses a threat to property, people or to the environment.

~~(b) All new underground product piping at new facilities and all underground suction piping at existing facilities must be installed or upgraded, before the deadline date of July 15, 2007, in accordance with165:26-2-55, "Underground piping materials," and with 165:26-2-56, "Installation and monitoring requirements for piping."~~

~~(c) However, compliance may be required sooner for any part of an existing system which poses a threat to property, people or to the environment.~~

(~~d~~b) Temporary tanks may not be used at retail facilities.

SUBCHAPTER 12. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED AT FLEET AND COMMERCIAL FACILITIES

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-12-2. Timeframes for registration and compliance with rules

(a) Tanks at fleet or commercial facilities with a capacity greater than 2,100 gallons must be registered with the Petroleum Storage Tank Division of the Commission. The tanks must come in compliance with the rules of this Chapter and Subchapter before July 15, 2007. Compliance may be required sooner for any part of an existing system which poses a threat to property, people or to the environment.

~~(b) All new underground product piping at new facilities and all underground suction piping at existing facilities must be installed or upgraded, before the deadline date of July 15, 2007, in accordance with165:26-2-55, "Underground piping materials," and with 165:26-2-56, "Installation and monitoring requirements for piping."~~

~~(c) However, compliance may be required sooner for any part of an existing system which poses a threat to property, people or to the environment.~~

(~~d~~b) Temporary tanks may not be used at fleet and commercial facilities.

(~~e~~c) Where alternative solutions are as good as, or better than, those set out in this Subchapter, changes may not be required. Alternatives that fail to protect property, people or the environment will not be accepted.

SUBCHAPTER 14. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY BULK PLANT FACILITIES

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-14-2. Timeframes for registration and compliance with rules

(a) Tanks at bulk plants must be registered with the Petroleum Storage Tank Division of the Commission. The tanks must come in compliance with the rules of this Subchapter before July 15, 2010. Compliance may be required sooner for any part of an existing bulk plant that poses a threat to property, people or the environment.

~~(b) All new underground product piping at new facilities and all underground suction piping at existing facilities must be installed or upgraded, before the deadline date of July 15, 2007, in accordance with165:26-2-55, "Underground piping materials," and with 165:26-2-56, "Installation and monitoring requirements for piping."~~

~~(c) However, compliance may be required sooner for any part of an existing bulk plant which poses a threat to property, people or the environment.~~

(~~d~~b) Temporary tanks will not be allowed at bulk plant facilities.

SUBCHAPTER 16. REQUIREMENTS FOR ABOVEGROUND STORAGE TANK SYSTEMS UTILIZED BY EMERGENCY GENERATORS

PART 1. GENERAL APPLICATION AND COMPLIANCE PROVISIONS

165:26-16-2. Timeframes for registration and compliance with rules

(a) Tanks that are greater than 110 gallons that contain fuel for emergency generators must be registered with the PSTD of the Commission. The tanks must have come ~~in~~ into compliance with the rules of this Chapter and Subchapter before July 15, 2005. ~~However Compliance may be required sooner for any part of an existing system which that poses a threat to property, people or the environment.~~

~~(b) All new underground product piping at new facilities and all underground suction piping at existing facilities must be installed or upgraded, before the deadline date of July 15, 2005, in accordance with165:26-2-55, "Underground piping materials," and with 165:26-2-56, "Installation and monitoring requirements for piping."~~

(~~e~~b) There are emergency generators manufactured which have a fuel storage tank built into the unit. A manufactured unit will be accepted as being in full compliance with these rules if:

(1) The storage tank is double-walled and installed according to the manufacturer's specifications or;

(2) The storage tank is single walled with secondary containment built into the unit and installed according to the manufacturer's specifications; or

(3) Its location does not pose a threat to people, property or the environment.

(~~d~~c) If a manufactured unit has a single walled tank without built in containment, it must be installed in compliance with the containment provision of this Chapter.

(~~e~~d) If the fuel storage tank is separate from the generator unit, it must meet and be installed according to this Chapter.

SUBCHAPTER 18. FINANCIAL RESPONSIBILITY [REVOKED]

165:26-18-1. Applicability [RENUMBERED TO 165:26-1-36]

~~(a) This Subchapter applies to owners and operators of all petroleum aboveground storage tank (AST) systems except as otherwise provided in this Section.~~

~~(b) State and Federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States are exempt from the requirements of this Subchapter.~~

~~(c) The requirements of this Subchapter do not apply to owners and operators of any AST system described in 165:26-1-22, "Exclusions."~~

~~(d) If the owner and operator of a petroleum aboveground storage tank are separate persons, only one person is required to demonstrate financial responsibility; however, both parties are liable in event of noncompliance.~~

~~(e) An owner or operator may satisfy the requirements of this Subchapter by use of the Petroleum Storage Tank Release Environmental Cleanup Indemnity Fund. There is a deductible for use of this mechanism and for which compliance may be demonstrated by use of any of the mechanisms listed in 165:26-18-3.~~

165:26-18-3. Evidence of financial responsibility [RENUMBERED TO 165:26-1-37]

~~Owners and operators of AST systems will provide evidence of financial responsibility through the mechanisms set forth below, or any other mechanism that is pre-approved by the Division Director of the PSTD:~~

~~(1) Self insurance~~

~~(2) Guarantee~~

~~(3) Insurance~~

~~(4) Surety bond~~

~~(5) Letter of Credit~~

~~(6) Trust fund or standby trust fund~~

~~(7) Securities pledge~~

~~(8) Cash or cash equivalent pledge~~

APPENDIX G. FINE CITATIONS TABLE [REVOKED]

APPENDIX G. FINE CITATIONS TABLE [NEW]

Rule	Violation	Fine Amount
Registration & Permit Requirements		
165:26-1-41 and 165:26-1-42; 165:26-1-47 and 165:26-2-212	Failure to register tanks within 30 days of bringing the system into place, or failure to amend registration to reflect changes	$500
165:26-1-70	Failure to pay AST permit fees prior to due date	Not > 50% of fee
165:26-2-5.1	Tank owner/operator accepting delivery into AST that does not have spill protection	$1,000
165:26-2-5.1 165:26-2-40 165:26-2-41	Tank owner/operator accepting delivery into AST that does have overfill protection or a required corrosion protection system	$1,000
Notification Requirements		
	Failure to identify all storage tanks on notification form after third request, including a letter advising tank owner of the penalty	$1,000
	Failure to provide installation information on notification form after third request, including a letter advising tank owner of the penalty	$1,000
	Failure to notify the OCC prior to AST closure.	$500
Required Reports		
165:26-1-57	Failure to submit tank closure report within 45 days	$250
165:29 and 165:26-3-171	Failure to submit required reports pertaining to suspected release investigations and/or corrective action activities in a timely manner	$250
	Second offense and thereafter for same case or tracking number	$500

Rule	Violation	Fine Amount
General Leak Detection Requirements		
165:26-3-77	Failure to notify Commission of indicated release	$250
165:26-3-20.2 and 165:26-3-20.1	Failure to provide adequate release or leak detection for storage tank system (first offense)	$250
	Second Offense	$500
	Third Offense	$1,000
	Failure to monitor tank(s) for releases as required	$250
165:26-3-20.2	Failure to use approved release or leak monitoring method for piping	$250
165:26-1-55, 165:26-1-57, and 165:26-1-59	Failure to maintain records of release or leak detection monitoring	$250
165:26-1-56	Failure to retain records of calibration, maintenance, and repair of release or leak detection equipment	$250
165:26-3-20.2	Failure to install or inspect leak detection on pressure piping	$250
Spill & Overfill Control		
165:26-3-77	Failure to report a spill (over 25 gallons)	$100
165:26-3-171	Failure to investigate a spill (over 25 gallons)	$100
	Failure to investigate an overfill spill	$100
	Failure to clean up a spill	$500
	Failure to clean up an overfill spill	$500

Operation/Maintenance of Corrosion Protection		
165:26-2-40 and 165:26-2-41	Failure to properly operate and maintain corrosion protection system (first offense)	$150
	Second Offense	$500
	Third Offense	$1,000
165:26-2-42	Failure to properly test corrosion protection system	$250
165:26-1-57	Failure to maintain records of cathodic protection inspections or testing	$250
165:26-2-42	Failure to use a qualified cathodic protection tester to inspect corrosion protection system at least once every three years (first offense)	$500
	Second Offense	$1,000
Release Investigation & Confirmation		
165:26-1-48 and 165:26-3-171	Failure to conduct tightness test(s) to investigate suspected leak(s)	$250
Temporary Closure		
165:26-2-211	Failure to secure all storage tank-related equipment for temporary closure	$250
	Failure to operate and maintain release or leak detection as required in a temporarily closed storage tank system	$250
Permanent Closure		
165:26-2-214	Failure to measure for the presence of a release before a permanent closure	$500
165:26-1-57	Failure to maintain proper closure records	$250
165:26-2-210	Failure to use licensed AST Remover	$500

Rule	Violation	Fine Amount
Repairs Allowed		
165:26-2-1.1 165:26-2-191	Failure to use an AST licensee to install or repair person to repair	$500
	Second offense or thereafter by owner (per owner, not per facility)	$1000
165:26-2-42	Failure to test storage tank systems cathodic protection within 6 months of repair	$250
165:26-2-8	Failure to perform tightness test on tank system after installation or repair	$300
165:26-1-56	Failure to maintain repair records for operating life of storage tank	$250
Other		
165:15-19-1	Misrepresentation of octane level per location	$500
	Second Offense within a year	$1000
	Third Offense –Closure & Hearing	$5000
165:26-1-31	Failure to follow standard codes for installation	$500
165:26-4-1	Failure to provide records upon request	$100
	Second offense or thereafter by owner (per owner, not per facility)	$500
Administrative Penalty	Any owner or operator of a storage tank who fails to comply with any order issued by the Commission for corrective or enforcement actions may be subject, after notice and hearing, to an administrative penalty in an amount as allowed by law.	

[OAR Docket #06-1031; filed 5-22-06]

TITLE 165. CORPORATION COMMISSION
CHAPTER 30. MOTOR CARRIERS

[OAR Docket #06-1131]

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PERMANENT final adoption
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Oklahoma Corporation Commission
Article IX, Section 18, Oklahoma Constitution
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Subchapter 3. Intrastate Motor Carriers
Part 1. Applying for a License
165:30-3-1. Obtaining a license [AMENDED]
165:30-3-3. License renewals [AMENDED]
Part 13. Suspension or cancellation of license
165:30-3-103. Reinstatement of certificate or permit, license or IRC [AMENDED]
Subchapter 7. Procedural Rules
165:30-7-2. Notice [AMENDED]
165:30-7-8. Review of Applicants for safety fitness [AMENDED]
Subchapter 9. Interstate Exempt Motor Carriers
Part 1. Applying for an IRC and IRC Requirements
165:30-9-1. Obtaining an Interstate Registration Receipt (IRC) [AMENDED]
Subchapter 15. Intrastate Private Carriers
Part 3. Obtaining a Private Carrier License and License Requirements
165:30-15-4. Obtaining a license [AMENDED]
165:30-15-5. License renewals [AMENDED]
Subchapter 16. Interstate Private Carriers [NEW]
165:30-16-1. Markings [NEW]
165:30-16-2. Lease agreement [NEW]
165:30-16-3. Shipping documentation [NEW]
165:30-16-4. Compliance with laws and regulations [NEW]
165:30-16-5. Minimum standards [NEW]
165:30-16-6. Loading capacity [NEW]
165:30-16-7. Contempt complaint [NEW]
165:30-16-8. Pollution abatement [NEW]
165:30-16-9. Deleterious substance transport permit [NEW]
Subchapter 21. International Fuel Tax Agreement [NEW]
165:30-21-1. Incorporating the International Fuel Tax Agreement [NEW]
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None
ANALYSIS:
OAC 165:30-1-2 is amended to clarify the definition of authority.
OAC 165:30-3-1 is amended to delete the requirements for the hearing of motor carrier applications, strike publication of applications on a Commission generated docket, and establish a hearing process if deemed appropriate.
OAC 165:30-3-3 is amended to strike the hearing and docketing provisions for renewal applications.
OAC 165:30-3-17 is amended to clarify markings on vehicles for motor carriers.
OAC 165:30-3-76 is amended to add rule and statutory contempt authority, modify acceptable payment, and revise certain fines and violations.
OAC 165:30-3-92 is amended to address the transfer of truck yard pit permits.
OAC 165:30-3-103 is amended to delete the reference to the Court Clerk.
OAC 165:30-7-2 is amended to provide for publication of household goods applications.
OAC 165:30-7-5 is amended to add additional forms.
OAC 165:30-7-6 is amended to add registration and fuel permit applications, requirement of USDOT numbers on applications, and provisions for application denial.
OAC 165:30-7-8 is amended to strike a docket reference and provide for administrative approval of authority.
OAC 165:30-9-1 is amended to delete the filing requirement for Interstate Registration Certificate applications.
OAC 165:30-9-6 is amended to reference the federal rules for marking requirements instead of the Commission Intrastate rule.
OAC 165:30-15-4 is amended to delete certain requirements related to hearing of private carrier applications.
OAC 165:30-15-5 is amended to strike hearing and publication requirements for private carrier license renewals.
OAC 165:30-16-1 is added to require interstate private motor carriers to comply with federal markings rules.
OAC 165:30-16-2 is added to require interstate private motor carriers to comply federal lease rules.
OAC 165:30-16-3 is added to require interstate private carriers to carry cargo documentation.
OAC 165:30-16-4 is added to require interstate private carriers to comply with all laws and Commission rules, and provide penalties for violations.
OAC 165:30-16-5 is added to provide minimum safety standards for interstate private carriers.
OAC 165:30-16-6 is added to require interstate private carriers to comply with load capacity provisions.
OAC 165:30-16-7 is added to provide contempt procedures for interstate private carriers.
OAC 165:30-16-8 is added to require interstate private carriers to abate pollution.
OAC 165:30-16-9 is added to require interstate private carriers to obtain deleterious substances permits.
OAC 165:30-19-1 is amended to substitute the word fees for taxes under the IRP.
OAC 165:30-19-2 is amended to substitute Corporation Commission for Tax Commission in the IRP definitions and define established account.
OAC 165:30-19-3 is amended to update the name, addresses and website of the Commission. OAC 165:30-19-4 amended to revise title requirements and proof of ownership for IRP.
OAC 165:30-19-5 is amended to revise requirements for IRP registrant's place of business.
OAC 165:30-19-6 is amended to update rule citations and revise proof of residency for IRP owner-operators.
OAC 165:30-19-11 is amended to make a grammatical correction.
OAC 165:30-19-13 is amended to update form references and strike reference to the Tax Commission.
OAC 165:30-19-14 is amended to strike reference to the Tax Commission.
OAC 165:30-19-15 is amended to make a grammatical correction and strike reference to the Tax Commission.
OAC 165:30-19-16 is amended to address disapproval of IRP applications.
OAC 165:30-19-17 is amended to address temporary registration and self-issue permits, and to remove references to the Tax Commission.
OAC 165:30-19-18 is amended to provide that registrants may be contacted regarding registration rather than they shall be contacted.

OAC 165:30-19-19 is added to provide for trip permits in lieu of IRP registration.

OAC 165:30-21-1 is added to set forth the purpose of the IFTA Subchapter.

OAC 165:30-21-2 is added to set forth IFTA definitions.

OAC 165:30-21-3 is added to require IFTA applications and renewals.

OAC 165:30-21-4 is added to provide for trip permits in lieu of IFTA licenses.

OAC 165:30-21-5 is added to specify requirements for IFTA license applications.

OAC 165:30-21-6 is added to require IFTA licensing to be in the name of the license.

OAC 165:30-21-7 is added to address the processing of IFTA license applications.

OAC 165:30-21-8 is added to address the circumstances under which an IFTA may be denied.

OAC 165:30-21-9 is added to provide for IFTA bond requirements for cause.

OAC 165:30-21-10 is added to specify bond amounts for IFTA licensees to file.

OAC 165:30-21-11 is added to provide that renewal licenses will issue upon meeting certain requirements.

OAC 165:30-21-12 is added to set forth the criteria for denial, revocation, and reinstatement of IFTA licenses.

OAC 165:30-21-13 is added to specify IFTA reporting requirements.

OAC 165:30-21-14 is added to establish due and delinquency dates for quarterly reports and payment of IFTA taxes.

OAC 165:30-21-15 is added to establish penalties for failure to submit reports or pay IFTA taxes timely.

OAC 165:30-21-16 is added to establish interest rates to be remitted for failure to pay IFTA taxes timely.

OAC 165:30-21-17 is added to incorporate by reference the IFTA Articles, IFTA Audit Manuals and IFTA Procedures Manuals.

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

165:30-1-2. Definitions

In addition to terms defined in 47 O.S., Sections 161 through 180m et seq. and the Motor Carrier Act of 1995, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Alliance" means the Alliance for Uniform Hazardous Material Transportation Procedures, a confederation of state, local industry and environmental representatives for the purpose of administering and enforcing a uniform hazardous materials transporters program as established by HMTUSA.

"Authority" means a general term referring to permission issued by the Commission to a motor carrier to perform operations under the jurisdiction of the Commission. The term authority is not applicable to vehicle registrations or fuel permits.

"Base state" means the state selected by a motor carrier according to the procedures established by a uniform program.

"CFR" means the Code of Federal Regulations.

"COD" means collect on delivery.

"Commission" means the Oklahoma Corporation Commission.

"Corporate family" means a group of corporations consisting of a parent corporation and all subsidiaries in which the parent corporation owns directly or indirectly one hundred percent (100%) interest.

"Deleterious substance" means any substance transported, which by its inherent nature, either in its raw state or compounded, in any quantity or volume, is harmful to livestock, crops or croplands.

"Environmental restoration" means restitution for loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This includes the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish and wildlife.

"Exceeding authority" means a motor carrier operating outside or beyond the purview of an issued license, certificate, permit, registration or other authority issued by the Commission or a reciprocal state.

"FMCSA" means the Federal Motor Carrier Safety Administration.

"GVWR" means the value specified by the manufacturer as the loaded weight of a single vehicle (gross vehicle weight rating) and may include any lawful combination.

"Hazardous waste" means any material that is subject to the Hazardous Waste Manifest Requirements of the United States Environmental Protection Agency specified in Title 40, CFR, Part 262.

"Hazardous waste permit" means the document issued by a participating state which represents a specific motor carrier's registration to transport hazardous waste in states that participate in the uniform hazardous waste program.

"HMTUSA" means the Hazardous Materials Transportation Uniform Safety Act of 1990.

"ICC" means the Interstate Commerce Commission/Federal Highway Administration.

"Identification device" means an annual, fee-paid, nontransferable device issued by the Commission to be carried in each and every vehicle.

"Intercorporate hauling" means the transportation of property, passengers or household goods by motor vehicle, for compensation, by a carrier which is a member of a corporate family, as defined in this Section, when said transportation for compensation is provided for other members of the corporate family.

"Interstate" means a shipment having an origin or destination into, out of or through two or more states.

"Interstate Registration Certificate (IRC)" means a document issued by the Commission granting permission to operate as a motor carrier upon the highways of the State of Oklahoma in ICC exempt interstate commerce.

"Intrastate" means a shipment having an origin and destination wholly within one state.

"IRC" means an Interstate Registration Certificate.

"IRP means the International Registration Plan as administered by the Oklahoma Tax Commission or other states.

"Letter of filing" means a document issued by the Commission to a motor carrier as evidence of temporary compliance with the hazardous waste uniform program.

"Motor carrier" means a for-hire motor carrier or a private motor carrier operating in interstate or intrastate commerce.

"Motor carrier of household goods" means a person holding a valid certificate or permit requiring public convenience and necessity transporting for hire used personal effects and property of a dwelling.

"NAIC" means the National Association of Insurance Commissions.

"Participating state" means a state electing to participate in a uniform program by entering into a base state agreement.

"PIN" means personal identification number.

"Principal place of business" means a single location that serves as the motor carrier's or private carrier's headquarters and where it maintains or can make available its operational records.

"Private motor carrier" means a person who operates a commercial motor vehicle and is not a for-hire motor carrier.

"Public convenience and necessity" means a determination of fact arrived at by the Commission in its expertise and discretion based upon evidentiary proceedings. It denotes a need for transportation service which may be less than absolute, but more than simple convenience or desire of shippers or consignees of freight. It presupposes a present or definite future requirement not already adequately met or will be met. The Commission's determination of fact is whether a proposed transportation service will serve a useful public purpose, responsive to a public demand or need, and whether this purpose can and will be served by the proposed service without unnecessarily endangering or impairing the operations of existing services contrary to the public interest as it applies to motor carriers of household goods.

"Registration" means the identification of hazardous waste transporters through a national base state system.

"Reciprocal state" means a jurisdiction with which the Commission has entered into a reciprocal agreement regarding the uniform registration, licensing or permitting of motor carriers.

"Trip permit" means a temporary authorization issued by the Commission granting permission to conduct operations as a motor carrier in intrastate and/or interstate commerce.

"Truck yard pit" means any pit used to store or catch fluids or wash fluids in a truck terminal or maintenance facility as the result of transportation related activities.

"Uniform application" means a uniform motor carrier registration, licensing or permit application form established under a uniform program.

"Uniform program" means any law, rule, policy, practice and/or all combinations thereof which pertain to the regulation of motor carriers by motor vehicle operating in interstate or intrastate commerce over the highways of Oklahoma and is recognized, adopted and enforced or administered by the Transportation Division only when in concert and reciprocal whit one or more states which adopt, recognize, administer and enforce the exact same rule, law, policy, practice and/or all combinations thereof.

"Unprocessed agricultural commodities" means all products raised or produced by tillage and cultivation of the soil, pasture grasses, orchard products, trees in their raw state and products produced by livestock (such as milk, wool, eggs, honey and manure). The term also includes those products embraced within the above definition which have been processed for purposes of handling, storage, preservation or transportation (such as washing, cleaning, wrapping, packaging, boxing, baling, trimming, drying, sorting, sizing, grading, cooling, spraying and fumigating). The term does not include those products embraced within the above definition which, as a result of some treatment or processing, have been so changed that they are no longer in their natural or raw state, but possess new forms, qualities, or properties or result in combinations.

"USDOT" means the United States Department of Transportation.

SUBCHAPTER 3. INTRASTATE MOTOR CARRIERS

PART 1. APPLYING FOR A LICENSE

165:30-3-1. Obtaining a license:

(a) No intrastate motor carrier shall operate upon any street, road, public highway or dedicated public thoroughfare of this State for the transportation of passengers or property for hire without first obtaining from the Commission a license as provided in this Section. A license issued under this Subchapter shall not include transportation as a motor carrier of household goods. Motor carriers of household goods must comply with Subchapter 13 of this Chapter.

(1) An applicant for a license shall file with the ~~Court Clerk of the~~ Commission a written application on the appropriate form prescribed by the Commission (TDF 1), and shall tender with the application a filing fee as prescribed by law or by Commission rule.

(2) The application shall be assigned a personal identification number (PIN), which shall be the permanent identification number for all matters relating to authority granted therein. Any application thereafter filed to amend the license by the same applicant shall be filed in the same cause under the original PIN, and otherwise shall be governed by the provisions of this Chapter relating to an application for license. Each subsequent application shall also bear a sub-number in sequence.

(3) A license shall be personal to the holder thereof, and shall be issued only to an individual, a corporation, a limited liability corporation, a partnership or some other legally recognized entity.

(4) The filing of an application for a license does not of itself authorize any motor carrier operations by the applicant. Such operations are prohibited until after all

requirements have been met, and a license has been issued. All requirements for compliance with this Chapter shall be met within thirty (30) days from date of ~~hearing recommending the license be issued.~~ receipt of a motor carrier license application by the Commission. Failure to comply ~~may~~ will result in dismissal of the application for a license. Licenses issued shall be valid for a maximum of one year and may be renewed after application has been filed as provided by this Chapter.

(5) No license for intrastate operations shall be issued until ~~after public hearing, unless~~ the applicant has provided a satisfactory USDOT safety rating or the applicant has demonstrated its ability to conduct operations in a safe and reasonable manner; and applicant is in compliance with all applicable rules and laws of the State of Oklahoma; has furnished proper proof of all insurance required by this Chapter and all applicable state statutes; and has purchased an appropriate number of identification devices.

(6) The notarized application shall require the following:

(A) Name, single trade name (if any), mailing address, physical address, telephone number and domicile county of the applicant.

(B) The type of applicant (indicating if sole proprietorship, partnership, corporation or other legal entity), specifying the names of all partners, officers and/or directors listing the addresses of each.

(C) The type of operations the applicant is applying for.

(D) The name and address of the motor carrier's process agent in Oklahoma (if the motor carrier does not maintain its principal place of business or a terminal in Oklahoma).

(E) Declaration of its USDOT number, safety rating and a safety summary report which details its safety program and lists all safety violations identified within the prior twelve (12) months. Motor carriers without a USDOT number must attach a copy of its previously submitted application for a USDOT number. The applicant shall notify the Commission in writing of its USDOT number once issued, unless the USDOT number is issued by the Commission.

(F) A size and weight summary report which details its size and weight compliance program and lists all size and weight violations identified within the prior twelve (12) months.

(G) A listing of all power vehicles and trailers to be used, detailing the model, make and capacity of each vehicle and denoting whether each vehicle is owned or leased.

(H) A description of all terminal and dock facilities.

(I) A declaration that the applicant is in full compliance with all other state laws, rules and regulations.

(J) Any other information the Commission deems pertinent.

(7) Every person operating under the Motor Carrier Act of 1995 and the rules of this Commission shall possess a copy of this Chapter governing the operations of motor carriers.

(8) A motor carrier desiring to modify its license operations shall file a sub application (TDF 1). Sub applications to include hazardous materials must comply with the provisions in this Section. Sub applications to modify other types of operations shall be exempt from (5) and (6)(D)-(H) of this subsection.

(9) A copy of the current license under which a motor carrier operates shall be carried at all times in each power unit by the motor carrier.

(b) A motor carrier engaged in intercorporate hauling shall be subject to this Subchapter.

~~(c) Notice of all intrastate motor carrier motions and applications to conduct operations shall be printed on the Commission Docket as prescribed by law for circulation to the public.~~

(c~~d~~) ~~If a public hearing date cannot be set within fourteen (14) days from date of application,~~ Applicant ~~applicant~~ may be issued a provisional intrastate license not to exceed ninety (90) days from date application is filed, provided all other requirements for the intrastate license have been met. Applicant must provide a written request for the provisional intrastate license to the Director of the Transportation Division. If the provisional intrastate license is issued, a copy of the provisional intrastate license must be carried in each vehicle operated by the Applicant.

~~(e) All parties not of record interested in any intrastate motor carrier application shall, only for the purpose of receiving further notices concerning the application, file with the Commission Court Clerk a letter containing the name and address of the party and attorney, if any.~~

(~~f~~d) ~~At the hearing, the applicant shall have the burden of establishing its ability to conduct operations in a safe and reasonable manner and in compliance with all applicable rules and laws of the State of Oklahoma and that it has furnished or will furnish proper proof of all insurance required by this Chapter and all applicable state statutes.~~ The Commission may grant or deny the motor carrier license application or may impose conditions, stipulations and limitations on the license. If the Commission deems a hearing on the application to be necessary, the hearing shall be set within 30 days of receipt of a complete application.

(~~g~~e) No intrastate motor carrier license shall be issued to an applicant until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(~~h~~f) All proceedings subsequent to the application~~, and the conduct of the hearing,~~ shall be governed by applicable provisions of the Commission's Rules of Practice, OAC 165:5.

165:30-3-3. License renewals

(a) Any motor carrier desiring to continue intrastate motor carrier operations as granted in its license, shall, prior to the date of license expiration, apply for renewal by submitting the appropriate application form (TDF 2) and all supporting documentation. Each renewal application shall be properly signed, attested to and notarized as follows:

(1) Application of sole proprietorship must be signed by owner.

(2) Application of partnership must be signed by one of the partners.

(3) Application of corporation must be signed by an officer.

(b) All intrastate motor carrier licenses issued by the Commission shall expire the same calendar month as issued, and shall be valid for a period of one year, but may be renewed for up to three years. Carriers renewing licenses for more than one year must maintain all requirements of that license as prescribed in Part 3 of this Subchapter in order for the license to be valid.

(c) Renewal applications shall be accompanied by a filing fee as prescribed by the Commission, unless filed simultaneously with a sub application to modify operations.

(d) ~~Renewal applications may be set for hearing, and, if set for hearing, shall be published on the Commission's Transportation Docket.~~ A renewal application may be set for hearing at the discretion of the Commission for good cause.

(e) An intrastate motor carrier desiring to renew its license should apply for renewal of its license a minimum of thirty (30) days prior to its expiration.

(f) A renewal application will not be accepted if the license has previously expired, unless the Director of the Transportation Division reviews and approves the acceptance of the application for renewal.

(g) No intrastate motor carrier license shall be renewed until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(h) No intrastate motor carrier operations shall be performed under an expired motor carrier license.

PART 3. LICENSE REQUIREMENTS

165:30-3-17. Markings

(a) Every intrastate motor carrier shall obtain and display a USDOT number.

(b) Each motor vehicle operated by a motor carrier shall be properly marked. The markings shall be in compliance with the Federal Motor Carrier Safety Regulations, 49 CFR Part 390.21 (b)-(d). A motor carrier operating under a DBA or trade name must first list the DBA or trade name on the carrier's operating authority.

(c) If the motor carrier's USDOT number is issued by the Commission, the letters OK must follow the carrier identification number. Motor carriers with an intrastate USDOT number will notify the USDOT and the Commission of its intent to engage in interstate operations prior to dropping the OK from its USDOT number.

(d) In the event a power unit is transferred or sold by ~~an~~ a motor carrier, the carrier is responsible for removing the markings from the unit.

PART 9. VIOLATIONS

165:30-3-76. Contempt complaint

In addition to the procedures set forth in the Oklahoma Statutes and in the Commission's Rules of Practice, OAC 165:5 regarding the procedure in proceedings as for contempt, the following procedures may be followed for violations under Subchapters 3, 5, 9, 11, 13, 15, ~~and~~ 17, 19, and 21 of this Chapter, ~~Title 47 O.S. Section 22.5s and Sections 161 through 180m et seq. and the Motor Carrier Act of 1995~~ and applicable statutes of Title 47 and Title 68:

(1) An enforcement officer/compliance inspector/rate field agent (hereinafter referred to as officer) of the Transportation Division may issue in the field a contempt citation for any violation of ~~47 O.S. Section 22.5s or Sections 161 et seq. or the Motor Carrier Act of 1995, and amendments thereto or of~~ this Chapter or any applicable state statute. The officer shall furnish a copy of the citation to the person.

(2) The citation shall be in the form prescribed by the Commission's Transportation Division.

(3) A person served with a contempt citation may post bond or be released by the complaining officer upon personal recognizance as provided herein. The person shall indicate a plea on the citation, and sign the citation~~, and mail or deliver it~~ in the presence of the complaining officer. A person served with a citation may elect to change this plea to the citation at any time prior to and including the hearing date before the Administrative Law Judge. Any person electing to plead not guilty shall appear at the time and date set forth on the citation for a hearing on the matter before the Administrative Law Judge and, if not appearing, forfeit the bond posted. All Rules of Practice, OAC 165:5, of the Oklahoma Corporation Commission regarding procedures for hearing shall apply to the hearings provided for herein, except that the Administrative Law Judge may issue either an oral or written recommendation to the Commission en banc on the matter.

(A) The Commission shall accept bond payment of a fine in the form of cash, certified check, cashier's check, certified or guaranteed bank check, postal or commercial money order, ~~or~~ guaranteed arrest bond certificate or any other form of payment accepted by the Commission. Such payment shall be in full satisfaction of the violation asserted in the complaint and the allegations and charges therein will be taken as confessed. The guaranteed arrest bond certificate must have been issued by either a trucking services club or surety company, officially authorized to issue such bonds for trucking violations in Oklahoma by the State Insurance Commission, or a trucking association authorized to transact business in Oklahoma by the State Insurance Commission. The guaranteed arrest bond certificate shall be signed by the person to whom it is issued and shall contain a printed statement that such surety company, trucking association or trucking services club guarantees to pay the fine imposed on such person.

(B) Any person may be released by the complaining officer on personal recognizance if the person is

unable to post a bond and the person has been issued a valid license to operate the motor vehicle they are operating, by Oklahoma, or by another state jurisdiction within the United States, or by any party jurisdiction of the Nonresident Violator Compact; and the complaining officer is satisfied as to the identity of the person receiving the citation. A person released on personal recognizance shall post a bond with the Commission within ten (10) days of the writing of the citation. Failure to do so may result in detention of equipment or revocation of authority.

(C) The failure to timely appear at the hearing at the time and date set forth on the citation may result in a request for suspension of the person's driver's license in Oklahoma, or in the nonresident's home state pursuant to the Nonresident Violator Compact. The Commission's Transportation Division shall report all such requests for suspension to the Department of Public Safety which shall proceed as provided for by the provisions of Section 1115.5 of Title 22 of the Oklahoma Statutes.

(D) The violations for which fines shall be accepted and amounts thereof shall be as follows:

(i) Operating as a motor carrier without proper ~~certificate, permit, license, interstate exempt registration or single state registration~~ authority:

(I) First violation within a 12-month period - ~~$265.00~~ $300.00

(II) Second violation within a 12-month period - $400.00

(ii) ~~Exceeding proper certificate, permit, license, interstate registration certificate or single state registration:~~

~~(I) First violation within a 12 month period - $265.00~~

~~(II) Second violation within a 12 month period - $400.00~~

~~(iii)~~ Operating ~~motor vehicle for hire without valid certificate or permit in vehicle, license in vehicle, interstate registration certificate in vehicle or single state registration receipt in vehicle~~ without carrying/producing a valid copy of the authority, permit, vehicle registration, fuel license or display of fuel decal or identification :

(I) First violation within a 12-month period - $125.00

(II) Second violation within a 12-month period - $200.00

~~(iv) Operating as a motor carrier without proper identification device:~~

~~(I) First violation within a 12 month period - $125.00~~

~~(II) Second violation within a 12 month period - $200.00~~

(~~v~~ iii) Operating as a motor carrier carrying an altered ~~registration receipt~~ authority, vehicle registration or fuel license:

(I) First violation within a 12- month period - $500.00

(II) Second violation within a 12-month period - $500.00

~~(vi) Operating as a motor carrier without proper insurance on file:~~

~~(I) First violation within a 12 month period - $125.00~~

~~(II) Second violation within a 12 month period - $400.00~~

(iv) Operating a commercial vehicle in excess of its legal weight by two thousand one (2,001) pounds or more or violating special permit-amount as specified in the Oklahoma Bond Schedule pursuant to 22 O.S. § 1115.3.

(~~vii~~ v) Transportation of a deleterious substance(s) without a current deleterious substance transport permit:

(I) First violation within a 12-month period - $300.00

(II) Second violation within a 12-month period - $400.00

(~~viii~~ vi) ~~Transportation of a deleterious substance(s) without a current deleterious substance transport permit in vehicle~~ Operating a vehicle without proper registration:

(I) First violation within a 12-month period - ~~$125.00~~ $175.00

(II) Second violation within a 12-month period - ~~$200.00~~ $250.00

(~~ix~~ vii) Operating motor vehicle ~~for hire~~ without proper markings on vehicle:

(I) First violation within a 12-month period - ~~$100.00~~ $175.00

(II) Second violation within a 12-month period - ~~$100.00~~ $250.00

(~~x~~ viii) Operating a commercial motor vehicle ~~as a private carrier~~ without ~~proper markings on vehicle~~ a valid fuel permit:

(I) First violation within a 12-month period - ~~$100.00~~ $125.00

(II) Second violation within a 12-month period - ~~$100.00~~ $200.00

(~~xi~~ ix) Operating motor vehicle ~~as carrier for hire~~ without valid lease agreement in vehicle:

(I) First violation within a 12-month period - $125.00

(II) Second violation within a 12-month period - $200.00

(~~xii~~ x) Operating motor vehicle ~~as carrier for hire~~ without proper shipping or cargo ownership documentation in vehicle:

(I) First violation within a 12-month period - $125.00

(II) Second violation within a 12-month period - $200.00

(~~xiii~~ xi) Failure to yield for inspection:

(I) First violation within a 12-month period - $150.00

(II) Second violation within a 12-month period - $200.00

~~(xiv) Undercharge or overcharge of rates set out in tariff:~~

~~(I) First violation within a 12-month period - $200.00~~

~~(II) Second violation within a 12-month period - $300.00~~

~~(xv) Operating as a private carrier without proper license:~~

~~(I) First violation within a 12-month period - $265.00~~

~~(II) Second violation within a 12-month period - $400.00~~

~~(xvi) Operating motor vehicle over 26,000 pounds GVWR as a private carrier without valid license in vehicle:~~

~~(I) First violation within a 12-month period - $125.00~~

~~(II) Second violation within a 12-month period - $200.00~~

~~(xvii) Operating as a private carrier without proper insurance on file:~~

~~(I) First violation within a 12-month period - $125.00~~

~~(II) Second violation within a 12-month period - $400.00~~

(xii) Operating as an interstate motor carrier while placed out of service by a federal agency:

(I) First violation within a 12-month period - $300.00

(II) Second violation within a 12-month period - $400.00

(~~xviii~~xiii) Operating as a transporter of hazardous waste without proper registration/permit:

(I) First violation within a 12-month period - $350.00

(II) Second violation within a 12-month period - $500.00

(~~xix~~xiv) Other violations, unless otherwise specified by the Oklahoma Statutes or by the Oklahoma Bond Schedule:

(I) First violation within a 12-month period - ~~$125.00~~ $175.00

(II) Second violation within a 12-month period - ~~$200.00~~ $250.00

(~~xx~~xv) The third conviction within a twelve-month period of units (i) through ~~(xix)~~ (xiv) of the subparagraph, unless otherwise specified by the Oklahoma Statutes, shall result in a contempt fine of $500.00. In addition, the Commission may suspend ~~for up to 30 days~~ or revoke a motor carrier's ~~license, interstate exempt registration, single state registration, or hazardous waste permit~~ authority, registration or permit.

(E) Every officer is authorized to serve process in motor carrier, private carrier and other Commission related matters.

PART 11. MISCELLANEOUS

165:30-3-92. Pollution abatement

(a) All transportation by motor vehicle of deleterious substances including salt water, brines, liquid mud, acids, or any other fluids used in the drilling, completion, operation or reworking of an oil or gas well and/or any fluids generated as a by-product or resulting from the production of an oil or gas well or the operation of a disposal facility or facility where equipment is cleaned shall be conducted in such a manner that prevents any pollution to the surface of the earth or any fresh water bearing formation. Pollution of surface water or subsurface water is hereby prohibited.

(1) This Section shall not be construed as modifying the rights, obligation or duties of any person under the law of this State, or any order, rule or regulation of the Oklahoma Water Resources Board, State Department of Health, Department of Environmental Quality, Oklahoma Wildlife Conservation Commission, State Board of Agriculture, Department of Pollution Control, Department of Public Safety or any other agency of this State with respect to the pollution of fresh water.

(2) When a complaint is received against any person or company alleging pollution as prohibited in this Section, or field investigations by Commission staff or other regulatory agencies indicates prohibited pollution occurring, the Transportation Division shall immediately initiate such action as is necessary or appropriate to abate the pollution.

(b) No transporters of fluids mentioned in this Section shall use an earthen pit for any storage of said fluids or the washing or otherwise cleaning of the inside of the trailer or container used to transport or store such fluids.

(c) Any truck yard pit used for the temporary storage of fluids from washing or cleaning activities of equipment used in the transportation of fluids mentioned in this Section shall not be constructed or enlarged until application (TDF 15) has been made to the Transportation Division, and approval received.

(d) An application to construct or enlarge a truck yard pit shall be accompanied by the filing fee as prescribed by Commission rule, contain an original notarized signature and reflect the following information:

(1) Applicant's name and trade name (if any).
(2) Mailing and physical address of applicant.
(3) USDOT number of applicant.
(4) Telephone and facsimile numbers of the applicant.
(5) Contact person.
(6) Email address of the applicant, if any.
(7) Legal location of the truck yard pit.
(8) Size of the truck yard pit.
(9) Soil conditions in the pit area.
(10) Depth of subsurface fresh water.
(11) Distance to the nearest surface fresh water.

(12) Additional information as required.

(e) If the applicant is not the landowner, the application must additionally be accompanied by the following:

(1) The name of the landowner.

(2) The mailing and physical addresses of the landowner.

(3) Telephone and facsimile numbers of the landowner.

(4) Email address of the landowner, if any.

(5) A copy of the lease agreement.

(6) Written permission of the landowner for the application to construct or enlarge a truck yard pit.

(f) Fluids generated from washing/cleaning operation in a truck yard shall be collected into a plastic lined pit of at least sixty (60) mls, concrete pit whose mechanical integrity is intact, or a metal container with such generated fluids to be taken to a licensed disposal facility. No pit shall be constructed or maintained as to collect outside runoff water, and the fluid level in such pit must be maintained at all times at least thirty six (36) vertical inches below the lowest point on the embankment.

(g) At any time the owner or operator of the truck yard pit changes or the owner or operator changes its name, the Transportation Division must be notified immediately in writing by the authorized pit owner or operator.

(h) No truck yard pit shall be abandoned without prior notification to the Transportation Division using the form TDF 15. Any such pit abandoned will be emptied and leveled within thirty (30) days of abandonment. The pit operator shall ensure the pit location is inspected by the Transportation Division prior to the pit being emptied and leveled,

(i) A truck yard pit shall be emptied and cleaned for the purposes of inspection, at the discretion of the Transportation Division Director.

(j) The Commission, by order, may close any truck yard pit to be found in violation of this Section.

(k) A truck yard pit permit may be transferred to another person upon approval by the Transportation Division. Application for transfer should be submitted on TDF 15T, and shall tender with the application a fee as prescribed by law or by Commission rule.

PART 13. SUSPENSION OR CANCELLATION OF LICENSE

165:30-3-103. Reinstatement of certificate or permit, license or IRC

(a) A motor carrier whose certificate or permit, or a portion thereof, license or IRC or a private carrier whose license has been cancelled by law or by order of the Commission, may file with the ~~Court Clerk of the~~ Commission a written application for reinstatement on the appropriate form prescribed by the Commission (TDF 8), and shall tender with the application a filing fee as prescribed by law or by Commission rule.

(b) The application for reinstatement must be filed within three (3) months from the date the certificate or permit, license or IRC was cancelled by law or by Commission order and may be approved by the Director for Administrative reinstatement. Applications not approved for administrative reinstatement may be set for hearing.

(c) The application shall be filed under the PIN as assigned to the certificate or permit, license or IRC, with appropriate sub-number designation.

(d) If the authority was revoked due to lack of insurance on file and the carrier cannot furnish proper proof of continuous insurance, the Commission may reinstate the certificate or permit, license or IRC only after a hearing has been held and notice thereof has been given as prescribed by the Oklahoma Corporation Commission's Rules of Practice, OAC 165:5.

(e) No ~~order granting~~ reinstatement shall be issued until all requirements of the certificate or permit, license or IRC have been fulfilled and a reinstatement fee as prescribed by law or Commission rule has been tendered.

SUBCHAPTER 7. PROCEDURAL RULES

165:30-7-2. Notice

(a) Notice of an application relating to intrastate motor carrier authority of household goods shall be published prior to hearing once each week for two (2) consecutive weeks as follows:

(1) For original certificate as an intrastate common carrier or contract carrier of household goods: in a newspaper of general circulation published in the county seat or the largest city of the county of the applicant's principal place of business; or,

(2) For transfer of an intrastate certificate or permit of household goods: in a newspaper of general circulation published in the county seat or the largest city in the county in which is located the principal place of business of the transferor and transferee.

(b) Notice of an application for a rate or tariff change requiring a hearing shall be published prior to hearing once each week for two (2) consecutive weeks in a newspaper of general circulation published in Oklahoma and Tulsa counties.

(c) Any nonresident of Oklahoma shall be deemed to have its place of business in Oklahoma County for the purpose of this Section.

(d) All parties not of record interested in any intrastate household goods motor carrier application shall, only for the purpose of receiving further notices concerning the application, file with the Commission's Court Clerk a letter containing the name and address of the party and attorney, if any.

(e) Notice of all intrastate household goods motor carrier motions, applications and transfers shall be printed on the Commission Docket as prescribed by law for circulation to the public.

165:30-7-5. Forms

The following forms of the Commission relate to this Chapter:

(1) **Intrastate license forms.**

(A) TDF 1 - Application for Intrastate Motor Carrier For-Hire or Private Carrier License

(B) TDF 2 - Application for renewal of Intrastate Motor Carrier License

(C) TDF 3 - Application for Change of Name on Intrastate Carrier License

(2) **Intrastate certificate or permit forms.**

(A) MCF 1 - Application For Common Carrier Household Goods Certificate and Necessity or Contract Carrier Household Goods Permit

(B) MCF 3 - Application to Transfer Motor Carrier Certificate or Permit of Household Goods

(C) MCF 4 - Motion For Temporary Authority Accompanying Application For Intrastate Carrier Household Goods Certificate of Convenience and Necessity or Permit

(D) MCF 4-A - Motion for Temporary Authority to Transfer Household Goods Certificate or Permit Accompanying MCF 3 Application to Transfer Intrastate Authority

(E) MCF 5 - Application for Change of Name on Intrastate Certificate or Permit

(F) MCF 6 - Application to Temporarily Operate Motor Carrier Household Goods Certificate or Permit As Representative of Estate

(G) MCF 7 - Application For Voluntary Suspension or Discontinuance Of Service of and Intrastate Household Goods Certificate or Permit

(H) MCF 7-A - Application to Reactivate A Household Goods Certificate or Permit Under Voluntary Suspension

(I) MCF 8 - Tariff Affidavit

(J) MCF 9 - Annual Report

(K) Form H - Uniform Motor Carrier Cargo Certificate of Insurance

(L) Form J - Uniform Motor Carrier Cargo Surety Bond

(3) **Intrastate and federal authority exempt interstate forms.**

(A) TDF 8 - Application for Reinstatement

(B) TDF 14 - Application For a Deleterious Substance Transport Permit

(C) TDF 16 - Application for Identification Devices

(D) TDF 17 - Application for Address Change

(E) TDF 18 - Affidavit of No Operations

(F) TDF 19 - Carrier Identification Report

(G) Form E - Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance

(H) Form K - Uniform Notice of Cancellation of Motor Carrier Insurance Policies

(I) Form G - Uniform Motor Carrier Bodily Injury and Property Damage Liability Surety Bond

(J) Form L - Uniform Notice of Cancellation of Motor Carrier Surety Bonds

(4) **Exempt from federal authority registration forms.**

(A) TDF 24 - Application for Exempt Interstate Change of Name

(B) Form A-1 - Application for Registration of Interstate Motor Carrier Operations Exempt from FMCSA Authority Regulations

(5) **Federal authority registration forms.**

(A) RS-1 - Uniform Application for Single State Registration For Motor Carriers Operating Under Authority Issued by the FMCSA

(B) RS-2 - Single State Registration System-Registration Receipt Application Form

(C) BOC-3 - Designation of Agents

(D) BMC 91 - Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance (full coverage)

(E) BMC 91X - Motor Carrier Automobile Bodily Injury and Property Damage Liability Certificate of Insurance (full coverage or aggregated limits)

(F) BMC 91MX - Motor Carrier Certificate of Insurance (Aggregate limits)

(G) BMC 90 - Endorsement for Motor Carrier Policies

(H) MCS 82 - Motor Carrier Public Liability Surety Bond

(I) BMC 35 - Notice of Cancellation Motor Carrier Policies of Insurance

(J) BMC 36 - Notice of Cancellation Motor Carrier Surety Bonds

(6) **Hazardous Waste forms.**

(A) UPW - Part I - Registration

(B) UPW - Part II - Permit

(C) UPW - Part III - Other Information

(D) UPW - Part IV - Certification

(E) UPW - Uniform Program Fee Worksheet (Schedules A-D and Summary)

(7) **IFTA/IRP forms.**

(A) IRP Schedule A - International Registration Plan Original Application-Schedule A

(B) IRP Schedule B - International Registration Plan-Schedule B

(C) IRP Schedule C - International Registration Plan Supplemental Application-Schedule C

(D) IRP Schedule G - International Registration Plan Declaration of Estimated Miles-Schedule G

(E) IRP Misc 1 - International Registration Plan Affidavit for Lost/Stolen Tag and Additional Cab Cards

(F) IRP TAP - International Registration Plan Application for Temporary Permit

(G) IFT Application - International Fuel Tax Agreement Registration Application

(H) IFT QTR - International Fuel Tax Agreement Quarterly Report

(8) **Miscellaneous forms.**

(A) TDF 25 - Application for Motor Carrier Rules and Regulations

(B) TDF 26 - Motor Carrier Rules and Regulations Update Notification

(C) TDF 27 - Motor Carrier Rules and Regulations Change of Address Notification

(D) TDF 15 - Application to Construct or ~~enlarge Earthen~~ Enlarge a Truck Yard Pit
(E) TDF 15T - Application to Transfer a Truck Yard Pit Permit
(F) TDF 28 - Vehicle Information Request Form

165:30-7-6. Applications and requests

(a) All intrastate motor carrier, intrastate private carrier, interstate exempt, single state, deleterious, ~~and~~ hazardous waste ~~applications~~, registration and fuel permit applications ~~and requests~~ must bear an original acceptable signature of the applicant. The applicant must be a legal entity with an optional single trade name listed that is not a legal entity. If signed by an attorney or agent in lieu of the applicant, a copy of the power of attorney must be attached to the application.

(b) Acceptable signatures on applications for authority are as follows:

(1) Sole proprietorship - sole proprietor.
(2) Partnership - one of the partners.
(3) Corporation - one of the officers or directors.
(4) Limited liability company - the manager.

(c) A name change relating to a partnership or a request to cancel a partnership must be signed by all partners.

(d) All authority applications filed by an applicant which does not maintain a terminal in Oklahoma must file and maintain a current listing of a valid Oklahoma process agent on behalf of the applicant.

(e) All applications shall contain the USDOT number of the operating motor carrier. Applications for registration shall additionally contain the USDOT number of the owner of each vehicle, and the registrant .

(f) Failure to properly complete any application may result in delay or denial of the relief sought.

(g) Applications may be denied due to outstanding monies owed to the Commission or other state or federal agencies.

(h) Interstate authority, fuel permits and registration cannot be issued to a motor carrier whose ability to operate in interstate commerce has been denied or revoked.

165:30-7-8. Review of Applicants for safety fitness

(a) Applicants for an intrastate motor carrier license, intrastate private carrier license, hazardous waste registration or permit, renewal of a license or an intrastate motor carrier of household goods certificate shall be reviewed for compliance with rules and regulations as adopted by the Oklahoma Department of Public Safety in OAC 595:35, pertaining to 49 C.F.R. Federal Motor Carrier Safety Regulations, with all amendments and appendices thereto. Areas to be reviewed are based upon, but not limited to, the following:

(1) The carrier's USDOT safety rating (if any).
(2) The number of vehicle inspections performed.
(3) The time frame in which the vehicle inspections were performed.
(4) The out of service ratio for applicant's vehicles
(5) The out of service ratio for applicant's drivers.
(6) Review of applicant's driver qualification files.
(7) Review of applicant's vehicle maintenance records.
(8) Verification of applicant's drug/alcohol testing program.

(b) Compliance with the Federal Motor Carrier Safety Regulations and all other requirements shall result in a license application being approved administratively or being set on the Motor Carrier ~~Recommendations~~ Docket, if hearing is required. ~~or the Administrative Docket, if a hearing is not required~~. ~~The carrier shall not be required to be present at the scheduled license hearing unless requested by the Administrative Law Judge.~~

(c) The Transportation Division shall notify the Administrative Law Judge of the results of a safety review performed on an applicant for an intrastate motor carrier of household goods certificate.

(d) Failure to comply with the Federal Motor Carrier Regulations may result in denial or delay of the relief sought.

(e) Holders of an intrastate motor carrier license and an intrastate motor carrier of household goods shall be reviewed on a periodic basis for compliance with the Federal Motor Carrier Safety Regulations. Results of safety reviews may be addressed in a hearing to renew an intrastate motor carrier license or an intrastate private carrier license or be addressed in a separate hearing before an Administrative Law Judge.

(f) Violations of the Federal Motor Carrier Safety Regulations are considered contempt of the Commission and subject to a fine in accordance with the rules and regulations of the Department of Public Safety in OAC 595:35.

SUBCHAPTER 9. INTERSTATE EXEMPT MOTOR CARRIERS

PART 1. APPLYING FOR AN IRC AND IRC REQUIREMENTS

165:30-9-1. Obtaining an Interstate Registration Certificate (IRC)

(a) No motor carrier shall conduct ICC exempt interstate motor carrier operations in Oklahoma without first obtaining an IRC from the Commission.

(b) An ICC regulated interstate motor carrier properly registered under Subchapter 11 of this Chapter, need not register as an ICC exempt interstate motor carrier under this Subchapter. An IRC issued to a motor carrier under this Subchapter shall automatically be revoked by the Commission when the motor carrier is properly registered under the SSRS program.

(c) An applicant for an IRC shall file with the ~~Court Clerk of the~~ Commission a written application on the appropriate form prescribed by the Commission (Form A-1), and shall tender with the application a filing fee as prescribed by law or by Commission rule.

(d) The application shall be assigned a PIN which shall be the permanent identification number for all matters relating to authority granted therein.

(e) An application for an IRC shall contain the carrier's USDOT number, if issued, or a copy of the carrier's application for a USDOT number previously submitted.

(f) An IRC shall be personal to the holder thereof, and shall be issued only to an individual, a corporation, a partnership or some other legally recognized entity.
(g) Motor carriers engaged in intercorporate hauling must obtain an IRC from the Commission.
(h) No IRC shall be issued until proper certificates of insurance have been filed with the Commission and identification devices have been obtained, when required. No operations shall commence until an IRC has been issued. IRCs are non-transferable.
(i) No IRC shall be issued to an applicant until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.
(j) A copy of the current IRC under which an interstate carrier operates shall be carried at all times in each power unit operated by the motor carrier.
(k) All IRCs previously issued under a docket number shall be reassigned under the Applicant's PIN.

165:30-9-6. Markings

All motor carriers engaged in ICC exempt interstate commerce shall comply with all provisions of ~~165:30-3-17~~ 49 CFR 390.21.

SUBCHAPTER 15. INTRASTATE PRIVATE CARRIERS

PART 3. OBTAINING A PRIVATE CARRIER LICENSE AND LICENSE REQUIREMENTS

165:30-15-4. Obtaining a license

(a) No intrastate private carrier, utilizing equipment with a GVWR in excess of 26,000 pounds, shall operate upon any street, road, public highway or dedicated public thoroughfare of this State for the transportation of property without first obtaining from the Commission a license as provided in this Section. A private carrier license is not required for a bona fide farmer transporting commodities from farm to market or market to farm; registered and valid non-profit organizations or any private carrier operating equipment leased or rented from a company that leases or rents vehicles on a commercial scale, provided the lease or rental contract is for thirty-one (31) days or less and a copy of the contract is carried in the vehicle. A license issued under this Subchapter shall not include transportation as a for-hire motor carrier. For-hire motor carriers must comply with Subchapter 3 and/or Subchapter 13 of this Chapter.

(1) An applicant for a private carrier license shall file with the ~~Court Clerk of the~~ Commission a written application on the appropriate form prescribed by the Commission (TDF 1), and shall tender with the application a filing fee as prescribed by law or by Commission rule.

(2) The application shall be assigned a personal identification number (PIN), which shall be the permanent identification number for all matters relating to the license granted therein. Any application thereafter filed to amend the license by the same applicant shall be filed in the same cause under the original PIN, and otherwise shall be governed by the provisions of this Subchapter relating to an application for license. Each subsequent application shall also bear a sub-number in sequence.

(3) A license shall be personal to the holder thereof, and shall be issued only to an individual, a corporation, a limited liability corporation, a partnership or some other legally recognized entity.

(4) The filing of an application for a license does not of itself authorize any private carrier operations by the applicant. Such operations are prohibited until after all requirements have been met, and a license has been issued. All requirements for compliance with this Subchapter shall be met within sixty (60) days from date of application recommending the license be issued. Failure to comply may result in dismissal of the application for a license. Licenses issued shall be valid for a maximum of one year and may be renewed after application has been filed as provided by this Chapter.

(5) No license for private carrier intrastate operations shall be issued until ~~after public hearing, unless~~ applicant has a satisfactory USDOT safety rating or the applicant has demonstrated its ability to conduct operations in a safe and reasonable manner and applicant is in compliance with all applicable rules and laws of the State of Oklahoma; has furnished proper proof of all insurance required by this Subchapter and all applicable state statutes.

(6) The notarized application shall require the following:

(A) Name, a single trade name (if any), mailing address, physical address, telephone number and domicile county of the applicant.

(B) The type of applicant (indicating if sole proprietorship, partnership, corporation or other legal entity), specifying the names of all officers, if any, and listing the addresses of each.

(C) The type of operations the applicant is applying for.

(D) The name and address of the motor carrier's process agent in Oklahoma (if the motor carrier does not maintain its principal place of business in Oklahoma).

(E) Declaration of its USDOT number, safety rating and a safety summary report which details its safety program and lists all safety violations identified within the prior twelve (12) months. Carriers without a USDOT number must attach a copy of its previously submitted application for a USDOT number. The applicant shall notify the Commission in writing of its USDOT number once issued, unless the USDOT number is issued by the Commission.

(F) A size and weight summary report which details its size and weight compliance program and lists all size and weight violations identified within the prior twelve (12) months.

(G) A listing of all power vehicles and trailers to be used, detailing the model, make and capacity of each vehicle and denoting whether each vehicle is owned or leased.

(H) A description of all terminal, dock or motor pool facilities.

(I) A declaration that the Applicant is in full compliance with all other state laws, rules and regulations.

(J) Any other information the Commission deems necessary.

(7) Every person operating under the Motor Carrier Act of 1995 and the rules of this Commission shall possess a copy of this Chapter governing the operations of motor carriers and private carriers.

(8) A private carrier desiring to modify its license shall file a sub application (TDF 1). Sub applications to include hazardous materials must comply with the provisions in this Section. Sub applications to modify other types of operations shall be exempt from (6)(D)-(G) of this subsection.

(9) A copy of the current license under which a carrier operates shall be carried at all times in each power unit by the private carrier.

(b) ~~Notice to all intrastate private carrier motions and applications to conduct operations shall be printed on the Commission Docket as prescribed by law for circulation to the public.~~

~~(c) If a public hearing date cannot be set within fourteen (14) days from the date of application, applicant~~ Applicant may be issued a provisional intrastate license not to exceed ninety (90) days from the date application is filed, provided all ~~other~~ requirements, with the exception of the educational compliance requirements, for the intrastate license have been met. Applicant must provide a written request for the provisional intrastate license. If the provisional intrastate license is issued, a copy of the provisional intrastate license must be carried in each vehicle operated by the Applicant.

~~(d) All parties not of record interested in any intrastate private carrier application shall, only for the purpose of receiving further notices concerning the application, file with the Commission Court Clerk a letter containing the name and address of the party and attorney, if any.~~

(~~e~~c) No intrastate private carrier license shall be issued to an applicant until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(~~f~~d) An intrastate private carrier additionally conducting intrastate motor carrier operations under a valid motor carrier license, certificate or permit need not obtain a private carrier license.

(~~g~~e) ~~At the~~ If a hearing is held, the applicant shall have the burden of establishing its ability to conduct operations in a safe and reasonable manner and in compliance with all applicable rules and laws of the State of Oklahoma and that it has furnished or will furnish proper proof of all insurance required by this Chapter and all applicable state statutes. The Commission may grant or deny the application or may impose conditions, stipulations and limitations on the license.

(~~h~~f) All proceedings subsequent to the application, and the conduct of the hearing, shall be governed by applicable provisions of the Commission's Rules of Practice, OAC 165:5.

165:30-15-5. License renewals

(a) Any private carrier desiring to continue intrastate private carrier operations as granted in its license, shall, prior to the date of license expiration, apply for renewal by submitting the appropriate application form (TDF 2) and all supporting documentation. Each renewal application shall be properly signed and attested to as follows:

(1) Application of sole proprietorship must be signed by owner.

(2) Application of partnership must be signed by one of the partners.

(3) Application of corporation must be signed by officer.

(b) All intrastate private carrier licenses issued by the Commission shall expire the same calendar month as issued, and shall be valid for a period of one year, but may be renewed for up to three years. Carriers renewing licenses for more than one year must maintain all requirements of that license as prescribed in Part 3 of this Subchapter in order for the license to be valid.

(c) Renewal applications shall be accompanied by a filing fee as prescribed by the Commission, unless filed simultaneously with a sub application to modify operations.

(d) ~~Renewal applications may be set for hearing, and, if set for hearing, shall be published on the Commission's Transportation Docket.~~ A renewal application may be set for hearing in the discretion of the Commission for good cause. All proceedings subsequent to the application, and the conduct of the hearing, shall be governed by applicable provisions of the Commission's Rules of Practice, OAC 165:5.

(e) An intrastate private carrier desiring to renew its license should apply for renewal of its license a minimum of thirty (30) days prior to its expiration.

(f) A renewal application will not be accepted if the license has previously expired, unless the Director of the Transportation Division reviews and approves the acceptance of the application for renewal.

(g) No intrastate private carrier license shall be renewed until all outstanding fines or judgments due the Commission or other state(s) regulatory agencies have been satisfied.

(h) No intrastate private carrier operations shall be performed under an expired private carrier license.

SUBCHAPTER 16. INTERSTATE PRIVATE CARRIERS

165:30-16-1. Markings

All motor carriers engaged in interstate private commerce shall comply with all provisions of 49 C.F.R. 390.21 with regard to markings.

165:30-16-2. Lease agreement

All motor carriers engaged in interstate private commerce shall comply with all provisions of 49 C.F.R. 376.11 with regard to lease agreements.

165:30-16-3. Shipping documentation

All motor carriers engaged in interstate private commerce shall be required to carry at all times documents that establish legal possession of cargo.

165:30-16-4. Compliance with laws and regulations

(a) All motor carriers engaged in interstate private commerce shall conduct their operations in accordance with all applicable laws of the State of Oklahoma and all applicable rules of the Commission. All registrations heretofore or hereafter filed with the Commission are subject to applicable provisions of law and of the rules of this Subchapter as fully as if those laws and rules were set forth verbatim herein.

(b) No motor carrier engaged in interstate private commerce shall operate or allow to be operated on the public highways of the State of Oklahoma any equipment for hire that does not comply with safety criteria established by the Statutes of Oklahoma or by the Department of Public Safety. No motor carrier shall permit any person to operate a motor vehicle for hire when such person is intoxicated or under the influence of alcohol or under the influence of amphetamines, stimulants or other drugs. Any vehicle which fails to meet safety criteria, or which is operated by a person under the influence of alcohol, amphetamines, stimulants or other drugs, shall be prevented from continued use of the public highways of the State of Oklahoma.

(c) Violation of the rules of this Subchapter may result in the motor carrier being prohibited from using the public highways of the State of Oklahoma or any other penalties deemed appropriate by the Commission pursuant to authority granted to the Commission.

165:30-16-5. Minimum standards

(a) Every vehicle used for interstate private commerce shall be in safe operating condition, and shall possess all safety equipment required by the Statutes of Oklahoma, the regulations of the USDOT and the rules of the Department of Public Safety.

(b) All vehicles will be utilized in a manner that conforms with the manufacturer's design standards and specifications.

(c) The Commission adopts the provisions of the rules and regulations as adopted by the Oklahoma Department of Public Safety in OAC 595:35, pertaining to 49 C.F.R. Federal Motor Carrier Safety Regulations, with all amendments and appendices thereto.

165:30-16-6. Loading capacity

All interstate private carriers shall comply with all provisions of OAC 165:30-3-71.

165:30-16-7. Contempt complaint

In addition to the procedures set forth in the Oklahoma Statutes and in the Commission Rules of Practice, OAC 165:5, regarding the procedure in proceedings as for contempt, the procedures set forth in 165:30-3-76 may be followed for violation for any requirement or provision of law or the rules of this Subchapter.

165:30-16-8. Pollution abatement

All motor carriers engaged in interstate private commerce shall comply with all provisions of OAC 165:30-3-92.

165:30-16-9. Deleterious Substance Transport Permit

All interstate private carriers transporting any deleterious substance(s) shall comply with all provisions of OAC 165:30-3-13 and OAC 165:30-3-11.

SUBCHAPTER 19. REGISTRATION PURSUANT TO THE INTERNATIONAL REGISTRATION PLAN

165:30-19-1. Purpose

The provisions of this Subchapter have been promulgated to facilitate the administration, enforcement, and collection of ~~taxes~~ fees under the International Registration Plan (IRP) and Oklahoma Motor Vehicle Licensing and Registration Act (47 O.S. §§ 1101 et seq.).

165:30-19-2. Definitions

In addition to terms defined in the IRP, the Uniform Operational Audit Procedure Guidelines, and the IRP Polices and Procedures Manual, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Applicant" means any person making an application with the Oklahoma ~~Tax~~ Corporation Commission seeking to register a vehicle or vehicles pursuant to the IRP.

"Application" means a filing with the Oklahoma ~~Tax~~ Corporation Commission, seeking to register a vehicle or vehicles with the Commission pursuant to the IRP.

"Apportioned registration" means the proportional registration of a vehicle pursuant to the terms of the IRP and this Subchapter.

"Carrier" means a fleet operator, which engages in the transportation of passengers or property for compensation or hauls its own commodity.

"Credentials" means identification plates and cab cards.

"Established account" means any prorate account for which a properly completed original application has been received by the IFTA/IRP Section and all corresponding and assessed fees have been paid in full.

"Grace period" means two months following the expiration of the registration year.

"Interstate" means between or through two or more jurisdictions.

"Intrastate" means from one point within a jurisdiction to another point within the same jurisdiction.

"IRP" means the International Registration Plan. The IRP is a licensing and reciprocity agreement between states of the United States and provinces of Canada that sets forth the procedures for registration and operation of vehicles traveling in two or more member jurisdictions.

"Mileage reporting period" or**"mileage year"** means the period of twelve (12) consecutive months immediately prior to July 1 of the year preceding the year of registration or license.

"New operation" means a vehicle or fleet of vehicles not previously registered pursuant to the provisions of the IRP. **New operation** does not include an existing fleet that is expanding the number of vehicles or area of operation.

"Normal business hours" means 8:30 a.m. to 4:30 p.m. local time.

"Operations" means actual movement of a vehicle. For purposes of this Subchapter, operations may be classified as interstate or a combination of interstate and intrastate.

"Proportional registration" means registration of an apportionable vehicle pursuant to the terms of the IRP and this Subchapter.

"Records" means and includes operational records.

"Registration agent" means a person hired by a registrant to prepare and/or file applications, supplemental applications, and other documents required for proportional registration in Oklahoma.

165:30-19-3. Registration

(a) **General requirements for registration.** Before a vehicle can be proportionally registered in the state of Oklahoma the registrant must:

(1) Have an established place of business located in Oklahoma or satisfy the requirements for registration as ~~a~~ an owner-operator;

(2) Complete the application, all required schedules, and provide backup documentation required by the Commission to verify the information submitted by the applicant;

(A) The application must include the mailing address and telephone number of the applicant, for verification purposes.

(B) If the application is signed by someone other than the registrant, pursuant to a power of attorney, the name or names of the individuals to whom such authority is granted must be included in the power of attorney executed by the applicant.

(3) Provide proof of payment (or suspension from levy) of Federal Heavy Vehicle Use Tax;

(4) Provide proof of financial responsibility pursuant to 47 O.S. § 7-602 (liability insurance);

(5) Except in the case of private carriers, provide proof of operating authority;

(6) Provide proof of ownership;

(7) Provide proof of payment of prior registration fees, if the vehicle was registered pursuant to the IRP in another jurisdiction; and

(8) Pay all applicable fees to complete registration.

(b) **Registration periods.** Application for registration may be made at any time during a registration year.

(c) **Where to make application.** Application for registration may be submitted through the mail to the ~~Prorate~~ IFTA/IRP Section, ~~Motor Vehicle~~ Transportation Division, Oklahoma ~~Tax~~ Corporation Commission, ~~2501 North Lincoln Boulevard~~ P.O. Box 52948, Oklahoma City, Oklahoma, ~~73194~~ 73152-2948, or by applying in person at ~~the Oklahoma City, Oklahoma office of the Tax Commission, Prorate Section, Motor Vehicle Division, located at~~ 409 N.E. 28th Street, in Oklahoma City. A list of other locations where application may be submitted is available from the ~~Prorate~~ IFTA/IRP Section or the Commission website under the Transportation Division (hhtp://www.occeweb.com).

(d) **Incomplete applications.** No application for proportional registration shall be processed unless the applicant has submitted the documentation required in (a) of this Section. Failure to submit the required documentation shall result in denial of the application.

165:30-19-4. Title requirements and ~~Proof~~ proof of ownership

~~(a) **Proof of ownership required.** Proof of ownership must be submitted for all vehicles being registered through an original or supplemental application.~~

~~(b) **Documentation.** One of the following documents is necessary to prove ownership:~~

~~(1) A copy of the title or vehicle registration in the owner's name;~~

~~(2) A copy of the front and back of an assigned out-of-state title;~~

~~(3) A lease-purchase agreement by which the registrant, under the terms of the agreement, is to become the owner of the vehicle at the end of the lease period for a nominal or no additional consideration; or~~

~~(4) A notarized Bill of Sale which contains the following information:~~

~~(A) Year, make, and vehicle identification number;~~

~~(B) Purchase price;~~

~~(C) Buyer and seller signatures; and~~

~~(D) Purchase date.~~

(a) Owners of vehicles registered in Oklahoma must possess an Oklahoma title as proof of ownership unless the vehicle has been previously registered in another jurisdiction and engaged in interstate commerce.

(b) Proof of ownership must be submitted for all vehicles being registered through an original or supplemental application. Documents necessary to prove ownership include:

(1) If titled in Oklahoma, a copy of the front and back of the title or vehicle registration in the owner's name;

(2) If previously registered in another jurisdiction and engaged in interstate commerce, a copy of another jurisdiction's IRP cab card and a copy of the front and back of the out of state title;

(3) A lease-purchase agreement by which the registrant, under the terms of the agreement, is to become the

owner of the vehicle at the end of the lease period for nominal or no additional consideration, and the vehicle is currently titled in the name of the leasing company and has been registered for interstate commerce with another jurisdiction.

165:30-19-5. Established place of business

(a) **General provisions.** To verify a registrant's established place of business in Oklahoma, the registrant must provide proof of a physical structure, designated by a street number or road location and open during normal business hours, which contains within it:

(1) A telephone or telephones publicly listed in the name of the fleet registrant;

(2) A person or persons conducting the fleet registrant's business; and

(3) The operational records of the fleet, unless such records can be made available in accordance with the provisions of Section 1602 of the International Registration Plan.

(b) **Specific compliance provision (IRP Decis. 99-4).** An established place of business as utilized in these rules and in Sections 210 and 218 of the International Registration Plan cannot be provided for the registrant by or in the form of a registration agent or other third party.

(c) **Physical structure.** A physical structure, owned, leased, or rented by the registrant, wherein operational records of the fleet can be made available for audit purposes, must be evidenced by:

(1) A current real estate tax bill;

(2) Photocopies of rent receipts or mortgage payments which indicate the business address;

(3) A current real estate rental contract and an original power of attorney conforming with Section 20 of Title 16 of the Oklahoma Statutes, if the contract is signed by someone other than the registrant; or,

(4) Proof of insurance coverage.

(d) **Publicly listed telephone.** A telephone or telephones, located in the structure, which is publicly listed in the name of the fleet registrant, must be evidenced by one of the following:

(1) A telephone bill in the registrant's name, indicating the business address; or

(2) A copy of a current listing in the current telephone book, or verification of a current, active directory listing for the registrant's business address from a telephone company.

(e) **Specific compliance provision (IRP Decis. 99-4).** A registrant may not utilize a telephone listing indicating the same telephone number as that of any other person in this state as a qualifying telephone listing under subsection (d).

(f) **Person or persons conducting registrant's business.** The person conducting the trucking-related business of the registrant must be in the permanent employment of the registrant, as evidenced by submission of the registrant's federal employer's identification or other identification number and verification by the Commission that the registrant is an employer for the purposes of Oklahoma Withholding.

(g) **Specific compliance provision (IRP Decis. 99-4).** A registrant may not utilize a registration agent or its employees to satisfy the requirement of the presence of a person or persons in this state conducting the registrant's business.

~~(h) **Affidavit.** The registrant must execute the uniform Affidavit for Mandatory IRP Records provided by the Commission.~~

(~~i~~h) **Use of registration agent.** Nothing in this Section shall be construed as prohibiting a registration agent from preparing or filing proportional registration applications or other documents for a registrant who meets the requirements set forth in this Section.

165:30-19-6. Registration as an owner-operator

(a) **General requirements.** An owner-operator is a registrant who provides proof of ownership pursuant to ~~710:60-4-4~~ OAC 165:30-19-4, and leases the vehicle with a driver to a carrier. Owner-operators who cannot fully comply with Section 218 of the International Registration Plan and ~~710:60-4-5~~ OAC 165:30-19-5 may register in Oklahoma, provided that the owner-operator furnishes a street address, a telephone number, and satisfactorily demonstrates that the owner-operator can be located in Oklahoma for purposes of audit.

(b) **Street address.** The street address in Oklahoma must be the street address where the owner-operator's records are maintained or where the records will be delivered for the purpose of audit. An owner-operator may not utilize the address of a registration agent to satisfy the requirement of an address in Oklahoma unless the owner-operator's records are maintained at the registration agent's address, or there is a continuing relationship between the owner-operator and the registration agent under which the records are to be provided for audit at the registration agent's address.

(c) **Telephone number.** The telephone number shall be the telephone number of the owner-operator or of a person who has knowledge of the owner-operator's whereabouts and is able to contact the owner-operator within a reasonable time upon request.

(d) **Owner-operator can be located.** The owner-operator must submit documentation that indicates the owner-operator can be located in Oklahoma for purposes of audit. Documentation acceptable for meeting the requirements of this subsection includes~~, but is not limited to~~:

(1) Proof of Oklahoma residency, such as an Oklahoma-issued driver's license, current Oklahoma Income Tax filing, proof of an Oklahoma homestead exemption, or other evidence of bona fide residency;

~~(2) Employment of owner-operator or owner-operator's spouse in Oklahoma.~~

~~(3) Enrollment of one or more of owner-operator's children in an Oklahoma school or schools; or,~~

(~~4~~2) Ownership of real property in Oklahoma.

(e) **Lease requirements.** An owner-operator must submit an executed copy of the lease between the owner-operator and the motor carrier, for a term, which is of substantially the same duration as the period of registration being sought. The lease terms may not provide for operation of the vehicle independent of the motor carrier.

165:30-19-11. Enforcement

(a) Credentials for the current registration year may be displayed upon receipt, but ~~should~~ shall be displayed on the vehicle by 12:01 a.m., on the enforcement date, since enforcement for display of current registration year credentials will begin on the enforcement date, unless extended by the Commission.

(b) Registrants whose renewal application is not received on or before the expiration date cannot avail themselves of the grace period and shall be subject to enforcement.

(c) Vehicles apprehended for improper registration credentials may be subject to arrest and fine in the jurisdiction in which the violation occurs.

(d) IRP apportioned registration does not include special fuel requirements, operating authority or ~~overdimensional~~ over dimensional and overweight permits.

165:30-19-13. Amended mileage/adding states

(a) If the operations of a registrant change to include additional states during the registration year, the additional states can be added to the fleet. The states must be added to all vehicles in the fleet. The original mileage percentages **cannot** be changed. The addition of a state or states will result in a total fee assessment in excess of One Hundred percent (100%).

(b) To apply to add states, the registrant must complete ~~OTC Form~~ Schedule B and submit ~~OTC Form~~ Schedule A or a list of currently registered vehicles. The appropriate space on the form should be marked to show the type of transaction and mileage must be shown for each state added. If there is actual mileage for a state being added, actual miles must be included. If not, estimated must be used.

(c) Estimated mileage must be based on reasonable proposed operations of the fleet during the entire calendar year for which a state is being added. The applicant shall be required to substantiate the estimation by submitting a full statement of the proposed method of operation on a form provided by the Commission. The statement shall include reasonable information relating to origin, destination, and number of trips. If requested, subsequent to initial review and prior to disapproval, the applicant shall submit supporting documentation, which may include verifiable contracts or brokerage agreements, or both. Alternatively, owner-operators may provide a copy of the miles reported by the carrier with which the vehicle and driver have a valid lease agreement. Additionally, the Division may independently substantiate mileage through other sources available to the ~~Oklahoma Tax~~ Commission.

(d) In the absence of a full statement of the proposed method of operation, the Commission shall require the applicant to utilize the 2nd year estimated mileage chart established by the Commission. The chart mileage shall be multiplied by the number of registered vehicles.

(e) Once the fees are paid, new IRP cab cards will be issued reflecting the additional state(s).

165:30-19-14. Audits

The ~~Motor Vehicle~~ Transportation Division of the ~~Oklahoma Tax~~ Commission has the responsibility of the conducting audits of the operational records of a registrant are not maintained at a location within the State of Oklahoma and cannot be made available for audit at a location within Oklahoma, the registrant will be required to reimburse the State of Oklahoma for expenses incurred by it's auditor(s) for expenses incurred by it's auditor(s) for performance of an audit at a location outside Oklahoma.

165:30-19-15. Mileage

(a) If an applicant for proportional registration operated for ninety (90) or more days during the ~~mileage reporting~~ mileage-reporting period of the preceding year, actual operated miles must be filed. For those jurisdictions where there is no mileage to report, but for which proration is desired, estimated miles must be filed.

(b) If an applicant for proportional registration is new, or the applicant did not operate for ninety (90) days or more during the reporting period, estimated miles must be files for all jurisdictions for which proration is sought.

(c) Estimated mileage will not be accepted after the first year of prorate registration in Oklahoma. Provided, in cases where actual operation was less than ninety (90) days during the ~~mileage reporting~~ mileage-reporting year, estimated mileage will also be accepted for the second year.

(d) Estimated mileage must be based on reasonable proposed operations of the fleet during the entire calendar year for which proportional registration is being sought. The applicant shall be required to substantiate the estimation by submitting a full statement of the proposed method of operation on a form provided by the Commission. The statement shall include reasonable information relating to origin, destination, and number of trips. If requested, subsequent to initial review and prior disapproval, the applicant shall submit supporting documentation, which may include verifiable contracts and/or brokerage agreements. Alternatively, owner-operators may provide a copy of the miles reported by the carrier with which the vehicle and driver have a valid lease agreement. Additionally, the Division may independently substantiate mileage through other sources available to the ~~Oklahoma Tax~~ Commission.

(e) In the absence of a full statement of the proposed method of operation, the Commission shall require the applicant to utilize the estimated mileage chart provided by the Commission. The chart shall be developed and updated annually by dividing the total actual miles for each member jurisdiction reported by Oklahoma registrants by the total number of vehicles registered with actual miles for the jurisdiction.

(f) Failure to provide a full statement of the proposed method of operation, or in the alternative, to submit the application based upon the estimated mileage chart developed by the Commission shall result in denial of the application for proportional registration.

165:30-19-16. Application disapproval

(a) An application will be ~~disapproved~~ denied if it is not properly completed. It is the responsibility of the registrant to submit all information required by the application instructions and attach all necessary documentation.

(b) The registrant or his agent will be notified if an application is ~~disapproved~~ denied and the reasons therefore or if additional information is needed.
(c) An application that has been ~~disapproved~~ denied may be resubmitted by the registrant but will be processed as a new application upon receipt of the resubmission.
(d) If the applicant believes that the application was wrongfully ~~disapproved~~ denied, the registrant may, within thirty (30) days of the mailing or hand-delivery of the notice of ~~disapproval~~ denial, file a written protest of the denial with the Transportation Division under the provisions of OAC 165:5 ~~request a hearing at which time the registrant can present testimony and/or evidence in support of the application~~.
(e) No extensions, temporary operating authority, or temporary credentials will be issued for vehicles listed on a ~~disapproval~~ denial application.

165:30-19-17. Temporary ~~operating authority~~ registration

New fleet vehicles, or vehicles being added to any existing fleet, must have some form of temporary ~~operating authority~~ registration prior to operation if permanent IRP credentials have not been issued. Oklahoma offers three (3) forms of temporary ~~operating authority~~ registration. All forms of temporary ~~operating authority~~ registration are valid for the period shown and will be honored by all IRP jurisdictions when properly completed and validated.

(1) **Temporary registration ~~authorization~~.** Temporary registration ~~authorization~~ may be obtained directly from the ~~Prorate~~ IFTA/IRP Section, ~~Motor Vehicle~~ Transportation Division, Oklahoma ~~Tax~~ Corporation Commission, ~~2501 North Lincoln Boulevard~~ P.O. Box 52948, Oklahoma City, Oklahoma, ~~73194~~ 73152-2948. The permit shall be completed in full by the applicant and validated by the ~~Prorate~~ IFTA/IRP Section at the time the application and appropriate fees are presented to the ~~department~~ section. The registration should be completed as follows:

(A) Enter the assigned Oklahoma IRP account number or leave a blank if no previous number has been assigned.

(B) Mark the appropriate section indicating the type of application on which the vehicle(s) is listed for registration and the date application was filed.

(C) List the vehicles being authorized by license plate number (leave blank if not assigned), equipment number, year model, make and the vehicle identification number. Unused vehicle listing spaces must be lined out.

(D) List jurisdictional weights for the vehicles. A separate form must be completed for vehicles which are not to be qualified at identical weights in the same jurisdiction. State with no entry must be lined out.

(E) Enter the registrant's name and business address as reported on schedule A or C application.

(F) Jurisdiction and weight information entered on the form must be consistent with those reported on the Schedule A or C form.

(G) Temporary registration ~~authorization~~ for established accounts may also be obtained directly from any person that has entered into an agreement with ~~Oklahoma Tax~~ Commission for distribution and issuance of temporary ~~operating authority~~ registration. ~~**Established account** means any prorate account for which a properly completed original application has been received by the Pro rate Section and all corresponding and assessed fees have been paid in full.~~ This registration must be completed in the same manner described in paragraph (1) of this subsection. Misuse of any temporary registration may result in denial of temporary registration privileges.

(2) **Required payment of fees.** Temporary ~~operating authority~~ registration or credentials may only be issued to new accounts after all required fees are paid. ~~**Established account** means any prorate account for which a properly completed original application was previously received by the Pro rate Section and all corresponding and assessed fees were paid in full.~~

(3) **Wires of ~~operating authority~~ temporary registration.** Wires of ~~operating authority~~ temporary registration may be requested from the ~~Motor Vehicle Division Prorate~~ IFTA/IRP Section in the following manner:

(A) **Where to apply.** Wires of operating authority may be requested through the ~~Prorate~~ IFTA/IRP Section, ~~Motor Vehicle~~ Transportation Division, Oklahoma ~~Tax~~ Corporation Commission, ~~2501 North Lincoln Boulevard~~ P.O. Box 52948, Oklahoma City, Oklahoma, ~~73194~~ 73152-2948, during normal business hours, Monday through Friday.

(B) **Application procedure.** A properly completed and signed Schedule C application must be mailed to the ~~Prorate~~ IFTA/IRP Section, ~~Motor Vehicle~~ Transportation Division, Oklahoma ~~Tax~~ Corporation Commission, ~~2501 North Lincoln Boulevard~~ P.O. Box 52948, Oklahoma City, Oklahoma, ~~73194~~ 73152-2948, prior to issuance of the wire request. The applicant must contact the appropriate wire service agency to determine the proper amount of fees due and the location to remit the fees.

(4) **Self-issue permits.** Self-issue permits are available only to established Oklahoma-based IRP registrants, and may be used ~~only~~ for ~~adding~~ vehicle(s) added to the fleet, duplicate cab cards, substitute license plates, state add and weight increase applications to the registrant's account. Self-issue permits may not be used for renewal vehicles. Self-issue permits may not be issued by a registrant to another registrant or to an applicant or potential applicant for Oklahoma proportional registration.

(A) **Self-issued temporary permits.** Self-issued temporary permits or authorizations may be issued up to a maximum of twenty-five percent (25%) of the registrant's fleet. Any registrant with a fleet of less than six (6) vehicles may be assigned one (1) self-issue permit.

(B) **Application procedure.** Properly completed permits allow for immediate temporary ~~operating~~

~~authority~~ registration for vehicles added to the fleet, duplicate cab cards, substitute license plates, state add and weight increase applications. Upon issuance, the original permit should be placed in the vehicle, and one copy mailed **immediately** to the ~~Prorate~~ IFTA/IRP Section, ~~Motor Vehicle~~ Transportation Division, Oklahoma ~~Tax~~ Corporation Commission, ~~2501 North Lincoln Boulevard~~ P.O. Box 52948, Oklahoma City, Oklahoma, ~~73194~~ 73152-2948. Within fifteen (15) days of issuance, another copy of the temporary ~~operating authority~~ registration must be submitted, along with a completed Schedule C.

(C) **Violations.** Misuse of the permits or failure to maintain proper accountability may result in the Prorate Section's refusal to issue the registrant self-issue permits.

165:30-19-18. Compliance confirmation

(a) New registrants ~~shall~~ may be contacted within six (6) months of registration to determine if required records are being maintained and give guidance on maintaining proper records. Initial contact will be by telephone or in writing. If the initial contact is unsuccessful, contact will be made by visiting the registrant's established place of business or place of business.

(b) New registrants who are not maintaining proper records at the time of initial contact will be provided guidance on maintaining proper records.

(c) The Commission will then notify the registrant who has received guidance pursuant to subsection (b), in writing, of the date on which proper second-year operational records must be made available by the registrant for inspection.

(d) If at that time, the registrant is unable to provide proper second-year operational records, the registrant will not be allowed to apportionally register in Oklahoma for the third year without a complete pre-registration audit of the renewal application.

165:30-19-19. Trip permits

(a) **Purpose of permit; validity.** The 72-hour trip permit provides full registration to trucks, truck-tractors, trailers, semi trailers, and motorbuses, which are not registered in Oklahoma. The permit is valid for either interstate or intrastate movement. This permit cannot be issued for a vehicle, which has been apprehended by law enforcement officers for improper registration.

(b) **Eligible out of state vehicles.** Out of state vehicles eligible for apportioned registration, but not registered as such, will be required to purchases a 72-hour trip permit before proceeding through the State of Oklahoma.

(c) **Where permit may be obtained; costs.** Trip permits are available from local tag agencies and from the Transportation Division of the Commission. The cost of the permit is set forth by statute.

(d) **Effect of expired, altered, or undated permit.** An operator of a motor vehicle possessing an expired, altered, or undated temporary permit shall be deemed to be operating an unregistered motor vehicle and shall be subject to full registration and penalty.

(e) **Newly purchased trucks to be registered in another state.** A permit must be issued on newly purchased trucks carrying a load and driving in another state for registration.

(f) **Receipt.** Only one copy of a 72-Hour Permit receipt will be given to applicant.

SUBCHAPTER 21. INTERNATIONAL FUEL TAX AGREEMENT

165:30-21-1. Purpose

The provisions of this Subchapter have been promulgated to facilitate the administration, enforcement, and collection of motor fuel taxes under the International Fuel Tax Agreement (IFTA) and Oklahoma Motor Fuel Tax Code (68 O.S. §§ 601 et seq.).

165:30-21-2. Definitions

In addition to terms defined in the IFTA, the IFTA Audit Manual, and the IFTA Procedures Manual, the following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Applicant"Applicant" means any person making an application with the Oklahoma Corporation Commission seeking to license a fleet pursuant to the IFTA.

"Application" means a filing with the Oklahoma Corporation Commission, seeking a license with the Commission pursuant to the IFTA.

"Audit" means a physical examination of record and source documents supporting a licensee's reports.

"Carrier" means a fleet operator, which engages in the transportation of passengers or property for compensation or hauls its own commodity.

"Commission" means the Oklahoma Corporation Commission

"Credentials" means IFTA identification license and decals.

"Fleet" means one or more vehicles

"Grace period" means two months following the expiration of the license year.

"Interstate" means between or through two or more jurisdictions.

"Intrastate" means from one point within a jurisdiction to another point within the same jurisdiction.

"IFTA" means the International Fuel Tax Agreement. The IFTA is a reciprocity agreement between states of the United States and provinces of Canada that sets forth the procedures for licensing, reporting and enforcement of qualified motor carriers. The IFTA requires member jurisdictions cooperate to ensure that each member receives motor fuel tax revenue due it.

"Operations" means actual movement of a vehicle. For purposes of this Subchapter, operations may be classified as interstate or a combination of interstate and intrastate.

"Person" means an individual, corporation, partnership, association, trust, or other entity

"Qualified Motor Vehicle" means a motor vehicle used, designed, or maintained for transportation of persons or property and:

(A) Having two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds or 11,797 kilograms; or

(B) Having three or more axles regardless of weight; or

(C) Is used in combination, when the weight of such combination exceeds 26,000 pounds or 11,797 kilograms gross vehicle or registered gross vehicle weight. Qualified Motor Vehicle does not include recreational vehicles.

"Recreational Vehicle" means vehicles such as motor homes, pickup trucks with attached campers, and buses when used exclusively for personal pleasure by an individual. In order to qualify as a recreational vehicle, the vehicle shall not be used in connection with any business endeavor.

"Records" means all documents, files, and work product and includes but is not limited to, operational records.

"Registration" means the qualification of motor vehicles normally associated with a prepayment of fees for the privilege of using the highway and the issuance of license plate and a registration card or temporary registration-containing owner and vehicle data.

"Registration agent" means a person hired by a licensee to prepare and/or file applications, reports and other documents required for IFTA licensing and reporting in Oklahoma.

"Reporting Period" means a period of time consistent with the calendar quarterly periods of January 1 - March 31, April 1 - June 30, July 1 - September 30, and October 1 - December 31.

"Revocation" means withdrawal of a license and privileges by the licensing jurisdiction.

"Temporary Permit" means a permit issued by the Oklahoma Corporation Commission or its agent to be carried in a qualified vehicle in lieu of carrying the IFTA license and the display of the permanent annual decals. A temporary permit is valid for a period of 30 days to give the carrier adequate time to affix the annual permanent decals.

165:30-21-3. Application and renewal

Any person based in Oklahoma operating a qualified motor vehicle(s) in two or more member jurisdictions is required to license under this Agreement, except as indicated in IFTA Articles of Agreement Sections R310 and R500.

165:30-21-4. Trip permits

(a) In lieu of motor fuel tax licensing under this Agreement, persons may elect to satisfy motor fuels use tax obligations on a trip-by-trip basis.

(b) Trip permits valid for a period of 120 hours from the time of issuance, may be obtained from the Commission or one of the authorized trip permitting services.

165:30-21-5. Application for license

A person shall file an application for licensing with the Commission on the prescribed form. The fuel tax license application shall have the following specified content:

(1) The account identification number specified in IFTA Procedures Manual Section P200;

(2) Name and social security number of owner(s), partners or corporate officers;

(3) Legal business name (if different from the name given above);

(4) Physical location of the business;

(5) Mailing address of the business;

(6) Signature and date;

(7) Number of IFTA decals required by licensee;

(8) Decal fee, as set forth in OAC 165:5;

(9) Statement of existence of bulk storage in all member jurisdictions;

(10) A statement that the applicant agrees to comply with reporting, payment, recordkeeping, and license display requirements as specified in the International Fuel Tax Agreement. The applicant further agrees that base jurisdiction may withhold any refunds due if applicant is delinquent on payment of fuel taxes due any member jurisdiction. Failure to comply with these provisions shall be grounds for revocation of license in all member jurisdictions; and

(11) A statement to the effect that the applicant certifies with his or her signature that, to the best of his or her knowledge, the information is true, accurate, and complete and any falsification subjects him or her to appropriate penalties of perjury.

165:30-21-6. Designation of licensee

Tax licensing under the International Fuel Tax Agreement shall be in the name of the licensee. IFTA Articles of Agreement Section R500 designates the party responsible for reporting and payment of fuel taxes in the case of lessors/lessees, independent contractors, and household goods agents.

165:30-21-7. Application processing

Upon receipt of an IFTA fuel tax license application from a new or renewing applicant, the Commission shall check all entries on the application to ensure that they are complete. If the Commission feels more information is required, the licensee should immediately be contacted requesting the required information. Upon being satisfied that the application is correct and all fees prescribed by law or Commission rule have been paid, the Commission shall issue the fuel tax credentials for the fleet.

165:30-21-8. Non-issuance of license

A license will not be issued if the applicant has been previously licensed under the IFTA and that license is still under revocation by any member jurisdiction or the application contains any misrepresentation, misstatement, or omission of information required in the application.

165:30-21-9. Bond requirement

To protect the interests of the state of Oklahoma and the member jurisdictions of the International Fuel Tax Agreement, the Corporation may, for cause, require licensees to file a surety bond payable to the State of Oklahoma for motor fuel taxes accruing against the licensee as a result of the IFTA program. Bonds shall be required for failure to file timely returns, or remittances, or when an audit indicates problems severe enough that, in the Commission's discretion, a bond is required to protect the interests of Oklahoma and the member jurisdictions.

(1) Bonds shall be required from licensees who have filed two or more delinquent IFTA tax returns, made two or more delinquent remittances, or made two or more payments drawn on accounts with insufficient funds, within the most recent 12 calendar months.

(2) A surety bond required for one of the above reasons must be in place before a licensee's suspended account can be reinstated.

165:30-21-10. Bond amount

Licensees who are required to post a surety bond shall provide the equivalent of at least twice the estimated average tax liability for the reporting period for which the licensee will be required to file a tax return. The Commission will direct that licensees required to post surety for severe audit problems, provide surety in the amount of the established audit liability, or at least twice the estimated average tax liability for the reporting period for which the licensee will be required to file a tax return depending on the circumstances, or BOTH if the Commission deems the problem severe enough.

165:30-21-11. License renewal

(a) A renewal license and decals for the following calendar year will be issued upon application and payment of all fees prescribed by law or rules of the Commission, if the license has not been revoked or canceled, all returns have been filed, and all motor fuels use taxes, penalties and interest due have been paid.

(b) Licensees whose renewal application is not received on or before the expiration date shall be subject to enforcement for display of credentials on the day following the expiration date.

165:30-21-12. Denial, revocation, and reinstatement

(a) The Administrator of the IFTA Section may deny the issuance of a motor carrier's IFTA license based upon the motor carrier's failure to provide IFTA returns and/or remittances to other member jurisdictions, or to prove it is qualified to obtain a IFTA license, or may revoke an IFTA license issued under 68 O.S. § 607(E) if he determines a motor carrier has:

(1) Made a knowing falsification of a material fact in a uniform application;

(2) Failed to timely file a quarterly IFTA tax return;

(3) Failed to timely pay in full a liability indicated on a quarterly IFTA tax return;

(4) Failed to timely pay in full a liability determined by an audit of the motor carrier's records;

(5) Paid any amount due under the IFTA program with a check drawn on an account with insufficient funds;

(6) Any other just cause to protect the interests of the state of Oklahoma and/or the IFTA member jurisdictions.

(b) The Administrator of the IFTA Section may reinstate or deny reinstatement of an IFTA license if the following conditions exist:

(1) A suspended motor carrier license may be reinstated if the motor carrier remedies the action that caused the suspension and pays the reinstatement fee of $100.

(2) If a bond is required, a suspended motor carrier license shall not be reinstated until the motor carrier has provided said bond.

(3) A suspended motor carrier license may be denied reinstatement for habitual violations of this Section.

(c) A motor carrier who wishes to contest a denial, revocation, or a reinstatement denial is entitled to a hearing under the procedures contained in the Commission's Rules of Practice, OAC 165:5

165:30-21-13. Reporting requirements

(a) Every person licensed under 68 O.S. § 607 shall make and transmit to the Commission, on or before the last day of April, July, October, and January of each year, upon a form prescribed and furnished by the Commission, a verified quarterly report, showing the total distance traveled by the licensee in all jurisdictions and the total volume (in gallons) of motor fuel or diesel fuel purchased or received in each jurisdiction on which the motor fuel tax levied by that jurisdiction has been paid to that jurisdiction. The report will also show the total distance and the total taxable distance traveled by the licensee in each IFTA jurisdiction, and the total volume (in gallons) of motor fuel or diesel fuel consumed in each IFTA jurisdiction. The total volume (in gallons) of motor fuel or diesel fuel purchased or received in each IFTA jurisdiction shall be deducted from the total number of gallons of motor fuel or diesel fuel consumed by the licensee each jurisdiction to determine the number of gallons of motor fuel or diesel fuel upon which each jurisdictions' motor fuel tax is be computed and paid.

(b) Every person licensed under this article who travels less than ten thousand (10,000) distance per year in Oklahoma may, at the option of the Commission, file an annual report in lieu of filing the quarterly report.

165:30-21-14. Due and delinquency dates

Every licensee at the time of filing each quarterly report shall report and pay to the Commission the full amount of tax due for the preceding quarter at the rates provided for on the

return. The completed report and tax remittance are due and payable on the first day of the succeeding quarter for which the report is filed, and if not paid, is delinquent from and after the last day of such month. If the last day of the month falls on a Saturday, Sunday, or legal holiday, the next business day shall be considered the final filing date.

165:30-21-15. Penalty

(a) When any licensee fails to submit to the Commission any report required or the full amount of the tax due hereunder before the delinquency date, the licensee shall pay, in addition to the interest provided for herein, a penalty of Fifty Dollars ($50.00) or 10% of the tax due whichever is greater for each occurrence.

(b) Penalty may be waived by the Commission for good cause shown when requested in writing by the licensee within 30 days of assessment or the filing of a return showing penalty due. The Transportation Division is authorized by the Commission to waive penalty amounts equal to or less than $1,000 for good cause shown. Good cause while not limited to the items below may include:

(1) Commission error causing the delinquency,

(2) Extended history of timely filing (at least two years) and payments prior to the delinquency, or

(3) Natural disaster causing the delinquency.

(c) Licensee's who desire waiver of penalty amounts greater than $1,000 must file an appeal with the Court Clerk's Office in accordance with OCC administrative procedures.

165:30-21-16. Interest

(a) When any licensee fails to make a required tax remittance to the Commission before the delinquency date, the licensee shall pay, in addition to the penalty provided for herein, interest in the amount of one percent per month. When delinquencies of a fractional month occur, the effected jurisdictions will not receive their tax payments until the following transmittal month. Therefore, interest on delinquencies for a fractional portion of a month shall be calculated at the full month rate.

(b) In accordance with the International Fuel Agreement, the Commission cannot waive interest assessed and/or paid by a licensee on behalf of other jurisdictions. Licensees desiring other jurisdiction(s) interest waivers must receive written authorization from the other jurisdiction(s) and present such waivers to the Transportation Division. Upon confirmation, the Transportation Division may remove the amounts from an assessment, or if previously paid, refund those amounts to the licensee.

(c) Interest due on Oklahoma's portion of fuel taxes remitted on an IFTA quarterly return may be waived by the Commission for good cause show. Good cause, while not limited to the items below, may include:

(1) Commission error causing the delinquency,

(2) Extended history of timely filing (at least two years) and payments prior to the delinquency, or

(3) Natural disaster causing the delinquency.

(d) Licensee's who desire waiver of interest amounts greater than $1,000 must file an appeal with the Court Clerk's Office in accordance with OCC administrative procedures.

165:30-21-17. Incorporating the International Fuel Tax Agreement

(a) Reference to the International Fuel Tax Agreement (IFTA). When reference is made to the International Fuel Tax Agreement or IFTA, it shall mean, unless the context clearly indicates otherwise, the fuel tax reciprocity agreement among the various states of the United States and the provinces of Canada, including the Audit Manual, which provides for payment of fuel taxes by licensees based on fuel used by qualified vehicles in the various jurisdictions, to which Oklahoma is a signatory state, as published by International Fuel Tax Association, Inc., as amended.

(b) Incorporation. The following Articles are, unless otherwise specifically provided, incorporated by reference in their entirety:

(1) Articles I through XXI of the International Fuel Tax Agreement (IFTA);

(2) The International Fuel Tax Agreement Audit Manual; and,

(3) The International Fuel Tax Agreement Procedures Manual.

(c) Inclusion of IFTA citations and definitions. When a provision of the IFTA is incorporated by reference, all citations and definitions contained therein are also incorporated by reference.

(d) **Inconsistencies or duplication.** In the case of any inconsistency or duplication between the requirements of those provisions incorporated by reference in this Section, and the rules set out in this Subchapter, the provisions incorporated by reference shall prevail, except where the rules in this Subchapter are more particular. The provisions incorporated by reference are subject to any limitations provided by Oklahoma law.

[OAR Docket #06-1131; filed 5-26-06]

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

[OAR Docket #06-1059]

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PERMANENT final adoption
RULES:
Subchapter 5. Administrative Fine Schedule
310:110-5-6. [AMENDED]
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Oklahoma State Board of Health; Fee and Fine Schedule For Occupation Licensing Service, 59 O.S., Section 61.1 et seq. and 1800.1 et seq.; 63 O.S. Section 1-106.1; 59 O.S., Section 858-634
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INCORPORATION BY REFERENCE:
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ANALYSIS:
The proposed new rule would establish a citation of fifty dollars for first violation, with a two hundred dollar subsequent fine, for failure to display the Home Inspector's license number as required by rule.
CONTACT PERSON
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A) WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. ADMINISTRATIVE FINE SCHEDULE

310:110-5-6. Schedule of fines for the Home Inspection Industry

The fine schedule for citations issued by the Department for Violations of the Home Inspector Licensing Act or the Rules promulgated thereunder shall be subject to the following fines:

(1) Violation of 310:276-5-2(d):
(A) First violation: $50.00
(B) Subsequent violation:$200.00
~~(1)~~(2)Violations of 310:276-11-2(a):
(A) First violation: up to $500.00
(B) Subsequent violation: up to $1,000.00
~~(2)~~(3)Violations of 310:276-11-2(b):
(A) First violation: up to $500.00
(B) Subsequent violation: up to $1,000.00
~~(3)~~(4)Violations of 310:276-11-2(c):
(A) First violation: up to $500.00
(B) Subsequent violation: up to $1,000.00
~~(4)~~(5)Violations of 310:276-11-2(d):
(A) First violation: up to $200.00
(B) Subsequent violation: up to $500.00
~~(5)~~(6)Violations of 310:276-11-2(e):
(A) First violation: up to $500.00
(B) Subsequent violation: up to $1,000.00
~~(6)~~(7)Violations of 310:276-11-2(f):
(A) First violation: up to $500.00
(B) Subsequent violation: up to $1,000.00
~~(7)~~(8)Violations of 310:276-11-2(g):
(A) First violation: up to $500.00
(B) Subsequent violation: up to $1,000.00
~~(8)~~(9)Violations of 310:276-11-2(h):
(A) First violation: up to $500.00
(B) Subsequent violation: up to $1,000.00
~~(9)~~(10)Violations of 310:276-11-2(i):
(A) First violation: up to $500.00
(B) Subsequent violation: up to $1,000.00
~~(10)~~(11)Violations of 310:276-11-2(j):
(A) First violation: up to $1,000.00
(B) Subsequent violation: up to $2,000.00
~~(11)~~(12)Violations of 310:276-11-2(k):
(A) First violation: up to $200.00
(B) Subsequent violation: up to $500.00
~~(12)~~(13)Violations of 310:276-11-2(l):
(A) First violation: up to $200.00
(B) Subsequent violation: up to $500.00
~~(13)~~(14)Violations of 310:276-11-2(m):
(A) First violation: up to $200.00
(B) Subsequent violation: up to $500.00
~~(14)~~(15)Violations of 310:276-11-2(n):
(A) First violation: up to $200.00
(B) Subsequent violation: up to $500.00

[OAR Docket #06-1059; filed 5-23-06]

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

[OAR Docket #06-1060]

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Subchapter 1. General Provisions
310:205-1-2. [AMENDED]
Subchapter 3. License Requirements
310:205-3-1. [AMENDED]
310:205-3-2. [AMENDED]
310:205-3-3. [AMENDED]
310:205-3-4. [AMENDED]
310:205-3-6. [REVOKED]
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ANALYSIS:
The proposed amendments include a number of revisions and new rule language designed to address various concerns and effect improvement to the qualification of persons licensed to perform work in the alarm industry. The proposal re-characterizes the licensing fees by altering the language to include application fees for each category. However, this is a change in terminology only and is not a new fee or a fee increase. The new rule language governing licensure for Fire Alarm Managers requires the prospective licensee to submit proof of Limited or Unlimited experience. The certification requirements will be raised to a higher standard beginning on July 1, 2006. Another revision revokes the category of Vehicle Alarm Licensing. The proposal includes provisions that amend certification for Burglar and Fire Alarm Manager, Technicians and Salespersons allowing them to use new coursework from the National Electronic Security Alliance as a basis for licensure, and remove previous certification courses provided through the National Training School of the National Burglar and Fire Alarm Association. The proposal defines the term "NESA: National Electronic Security Alliance." The proposal amends the requirements by clarifying the Limited and Unlimited Fire Alarm Managers certification of experience that must be submitted prior to licensure.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

310:205-1-2. Definitions

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

"BOCA" means Building Officials and Code Administrators International, Inc.

"Burglar alarm company" means an alarm industry business which offers to, or engages in the planning, installation, repair, alteration, maintenance, service, sale, inspection or advertisement of burglar alarms.

"Burglar alarm company manager" means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract, who shall provide direct supervision over the function and local operations of such alarm industry business or a branch thereof.

"Burglar alarm salesperson" means an individual who is employed by an Oklahoma licensed burglar alarm company to sell burglar alarm equipment.

"Burglar alarm technician" means an individual who is employed by an Oklahoma licensed burglar alarm company to install, service and sell burglar alarm equipment.

"Burglar alarm technician trainee" means an individual who is employed by an Oklahoma licensed burglar alarm company to assist burglar alarm technicians or managers and learn to properly install service and sell burglar alarm equipment.

"CABO" means The Council of American Building Officials.

"Certification of an alarm system" shall mean testing per applicable code of any burglar alarm, fire alarm, or sprinkler alarm system by a properly licensed alarm individual working for a properly licensed alarm company to verify that the system complies with all of the requirements of the applicable code or standard.

"Certification of Personnel" shall mean proof of successful completion of a standardized formal program of related instruction and testing as provided by a recognized organization and approved by the Alarm Industry Committee in compliance with section 310:205-3-2(f) of this chapter.

"Commercial building" means a building or structure used for any purpose or occupancy that is not defined in this section as a *Residential Building*.

"Committee" means the Alarm Industry Committee.

"Department" means the Oklahoma State Department of Health.

"Fire alarm company" means an alarm industry business which offers to, or engages in the planning, installation, repair, alteration, maintenance, service, sale, inspection or advertisement of fire alarms. The company will be licensed as a limited or unlimited fire alarm company as defined by this chapter.

"Fire alarm company manager" means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract, who shall provide direct supervision over the function and local operations of such alarm industry business or a branch thereof.

"Fire alarm salesperson" means an individual who is employed by an Oklahoma licensed fire alarm company to sell fire alarm equipment.

"Fire sprinkler inspector" means an individual who is employed by an Oklahoma licensed alarm company to inspect and test a fire alarm sprinkler system to determine if it has been installed and is operating according to the appropriate code or standard.

"Fire alarm technician" means an individual who is employed by an Oklahoma licensed Fire Alarm Company to install, service and sell fire alarm equipment.

"Fire alarm technician trainee" means an individual who is employed by an Oklahoma licensed Fire Alarm Company to assist fire alarm technicians or managers and learn to properly install, service and sell fire alarm equipment.

"Fire sprinkler company" means an Alarm Industry Business which employs a Fire Sprinkler Company Manager. An Oklahoma licensed Fire Sprinkler Technician or Manager

shall be on any job site where fire sprinkler work is being performed. The company will be licensed as a limited or unlimited company as defined by this chapter.

"Fire sprinkler company manager" means an officer or manager of a company, corporation, partnership or proprietorship, with the authority to bind the company by contract, who shall provide direct supervision over the function and local operations of such alarm industry business or a branch thereof.

"Fire sprinkler technician" means an individual who is employed by an Oklahoma licensed alarm company to install, service and sell fire sprinkler equipment.

"Fire sprinkler technician trainee" means an individual who is employed by an Oklahoma licensed fire sprinkler company to assist fire sprinkler technicians or managers and learn to properly install and service fire sprinkler systems.

"IBC" means the International Building Code.

"ICC" means the International Code Council, Inc.

"Inspection" shall mean the visual observation or alarm system test of any burglar alarm system, fire alarm system or fire sprinkler system to determine if the alarm system has been installed and is operating according to the applicable code or standard.

"Limited fire alarm license" means the category of license which authorizes a fire alarm company, manager, technician or salesperson to engage in the alarm industry activities in compliance with this Chapter for fire alarm systems used in Residential Building and manufactured housing.

"Limited fire sprinkler license" means the category of license which authorizes a fire sprinkler company, manager, or technician to engage in the alarm industry activities in compliance with this Chapter for fire sprinkler systems used in Residential Building and manufactured housing.

"Manufactured Housing" means a structure, transportable in one or more sections, which in the traveling mode is 8 body feet (2438 body mm) or more in width or 40 body feet (12 192 body mm) or more in length, or, when erected on site, is 320 square feet (30 m^2)or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein. For the purpose of these rules, a mobile home shall be considered a manufactured home, and each shall be regarded as manufactured housing.

"Monitoring company" means an alarm industry business which offers to, or does monitor burglar and/or fire alarms located in Oklahoma.

"Monitoring company manager" means an individual who is employed by an Oklahoma licensed alarm company and has control of the monitoring of alarm systems located in Oklahoma.

"Multiple activity office" means a location where more than one regulated activity is performed or conducted.

"Multipurpose Fire Sprinkler System" means a single piping system within residential building and manufactured housing where the same piping system simultaneously serves both domestic and fire protection needs and are not independent systems in any manner as described by the 1999 edition Standard for the installation of Sprinkler Systems in One and Two Family Dwellings (NFPA 13D).

~~**"NBFAA"**~~**"NESA"** means the National ~~Burglar and Fire Alarm Association~~Electronic Security Alliance.

"NFPA" means the National Fire Protection Association.

"NICET" means the National Institute of Certification in Engineering Technologies, a certification program sponsored by the National Society of Professional Engineers.

~~**"NTS"** means The National Training School, created by the National Burglar & Fire Alarm Association (NBFAA) to provide standardized training and testing for the certification of burglar and fire alarm individuals.~~

"Ownership" means the dominion, title or proprietary right in a company subject to the Alarm Industry Act and this Chapter.

"Residential building" shall mean buildings arranged for the use of one (1)- or two (2)-family dwelling units, including not more than five (5) lodgers or boarders per family and multiple single-family dwellings where each unit has an independent means of egress and is separated by a two (2)-hour fire separation assembly and all detached one (1)- or two (2)-family dwellings not more than three (3) stories in height, and the accessory structures as indicated in the 1995 edition of the CABO One and Two Family Dwelling Code.

"Security verification" means information submitted to the appropriate authority on each applicant to verify any criminal records.

"Unlimited fire alarm license" means the category of license which authorizes a fire alarm company, manager, technician or salesman to engage in the alarm industry activities in compliance with this Chapter for any residential or commercial application.

"Unlimited fire sprinkler license" means the category of license which authorizes a fire sprinkler company, manager or technician to engage in the alarm industry activities in compliance with this chapter for any residential or commercial application.

~~**"Vehicle alarm company"** means an alarm industry business which offers to, or engages in the planning, installation, repair, alteration, maintenance, service, sale, or inspection of vehicle alarms.~~

~~**"Vehicle alarm company manager"** means an individual who has control of an Oklahoma licensed vehicle alarm company.~~

SUBCHAPTER 3. LICENSE REQUIREMENTS

310:205-3-1. General alarm application and license requirements

~~(a)~~ The categories of licensing in the alarm industry shall be:

(1) Burglar alarm;
(2) Limited fire alarm;
(3) Unlimited fire alarm;
(4) Alarm Monitoring; or
~~(5) Vehicle alarm; or~~
(5~~6~~) Fire sprinkler.

~~(b) General licensing requirements for the alarm industry are set forth in Appendix A of this Chapter.~~

310:205-3-2. ~~License~~Application and license fees, period and display, and examination alternatives or prerequisites

(a) **~~License~~Application and license fees.** The following fees apply to alarm industry licensure:

(1) **Initial application and licensing ~~fee~~fees**

(A) Alarm Company application and License - $250.00; license issued after February 1, but before the end of the State fiscal year - $125.00

(B) Company Manager - ~~$200.00~~ Application $100.00 and Licensing fee $100.00

(C) Alarm Technician/Alarm Technician Trainee - ~~$75.00~~ Application $40.00 and Licensing fee $35.00

(D) Alarm Salesperson - ~~$75.00~~Application $40.00 and Licensing $35.00

(E) Re-Examination, Per Attempt - $50.00

(F) Inspector - ~~$75.00~~Application $40.00 Licensing $35.00

(G) Fire Sprinkler Technician - ~~$75.00~~Application $40.00 and Licensing fee $35.00

(H) Fire Sprinkler Technician Trainee $20.00

(I) Duplicate or Revised license $25.00

(2) **Renewal fees.**

(A) Company License - $250.00

(B) Company Manager - $100.00

(C) Technician - $35.00

(D) Alarm Technician Trainee - $25.00

(E) Alarm Salesperson $35.00

(F) Inspector $35.00

(G) Fire Sprinkler Technician Trainee $15.00

(b) **License period.**

(1) A license shall expire on June 30, 1991, and each year thereafter. Beginning on July 1, a license may be renewed by paying double the renewal fee.

(2) Initial application for Alarm Technicians, Sales and Trainees shall be submitted within three (3) working days of employment to the Department. This registration shall be contingent on a security background investigation.

(3) A license which has been expired for more than two (2) years shall not be renewed. An individual may obtain a valid license by successful completion of the appropriate examination and/or certification and other licensure requirements.

(c) **Re-examination.** Any applicant failing to pass the appropriate examination shall be required to retake the same category examination after payment of the appropriate retest fee pursuant to 310:205-3-2(a)(1).

(d) **Company license display.** The state issued company license number shall be placed on all letterhead stationery, business cards, invoices, statements, contracts, bids, estimates and printed advertisements, and shall be included in electronic media advertisements. Decals and yard signs shall display the state issued company license number. The state issued license number shall be located on all vehicles that display the alarm company name.

(e) **Personal license display.** Each Manager, Technician, Technician Trainee, or Salesperson, shall possess the state issued card any time the person is working. The card shall be shown when requested.

(f) **Certification.**

(1) An applicant for an alarm license may submit certification or proof of passing the appropriate examination(s) from a nationally recognized organization as a prerequisite to, or as a substitute for, an alarm examination administered by the Department as provided for in Sections 310:205-3-3, 310:205-3-4 or 310:205-3-7 of this Chapter.

(2) In order to qualify, certification submitted by an applicant for alarm licensure shall be from an organization that issues national certification to individuals in the alarm industry and is based on successful completion of an examination which determines if the applicant is sufficiently knowledgeable in alarm systems or technical sub-fields of alarm systems to plan, install, repair, alter, maintain, service, sell, inspect, advertise, and monitor alarm systems or technical sub-fields of alarm systems according to nationally acceptable code standards.

(3) The Department shall accept certification from an organization if the certification standards have been verified by the Alarm Industry Committee to include that the certifying organization:

(A) shall conduct certification activities which are national in scope;

(B) shall be administratively independent in matters pertaining to certification. Administratively independent means that all policy decisions relating to certification matters are the sole decision of the certifying organization and not subject to approval by any other body or the membership of an affiliated body, and that all financial matters related to the operation of the certifying organization are segregated from those of the parent or any affiliated organization;

(C) shall demonstrate that the organization staff possesses the knowledge and skills necessary to conduct the certification or re-certification programs or that non-staff consultants and professionals are available to sufficiently supplement staff knowledge and skills;

(D) shall use reliable testing mechanism(s) to evaluate individual knowledge that is objective, fair to all candidates, job-related, and based on the knowledge and skills needed to function in the alarm industry or technical sub-field of the alarm industry;

(E) shall establish pass/fail levels that protect the public determining if the applicant is sufficiently knowledgeable in alarm systems to design, install, service, and sell alarm systems or technical sub-fields of the alarm industry that meet applicable code standards, and that are generally acceptable in the psychometric community as being fair and reasonable; and

(F) shall publish and make available to the Department general descriptive materials on the procedures used in examination construction and validation, all

eligibility requirements and determination procedures, and the procedures for examination administration including exam dates and locations, fees, reporting of results, re-certification requirements, and grievance or appeals procedures.

310:205-3-3. Burglar alarm license requirements

Licensing requirements for the burglar alarm industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed burglar alarm company manager who is responsible for the operations of the company's office. Any company maintaining multiple activity offices within Oklahoma, shall have a licensed burglar alarm manager at each office. Each burglar alarm company shall employ an Oklahoma licensed burglar alarm company manager. After January 1, 2003, all burglar alarm companies applying for initial licensure and/or any burglar alarm company which changes its burglar alarm company manager or ownership shall comply with section 310:205-3-3(2)(C) of this chapter. After July 1, 2003, all burglar alarm companies will comply with section 310:205-3-3(2)(C) of this chapter.

(B) A licensed burglar alarm technician or manager shall be on site for any work being performed.

(C) A burglar alarm company may operate multiple activity offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-3(1)(A). The company will notify the department of the physical address and telephone number for each multiple activity office in accordance with 59 O.S. Section 1800.10.

(D) The alarm company shall remove access and "lockout" codes from the alarm system after the legal termination of the monitoring agreement on customer-owned equipment upon the receipt of a written request from the owner to remove such codes.

(E) The customer shall be given a copy of all documents at the time of the sale and the company shall maintain a copy of all of the documents. All monitoring and/or lease contracts shall include, as a minimum, the following information: the initial term of the agreement, the renewal term of the agreement, the terms for notification of cancellation of the agreement as well as the costs involved of all the terms of the agreement, the company name and the state issued license number, the sales representative's name and state issued license number, and the customer's name and address. The minimum information described above shall be disclosed in one of the following two ways:

(i) Printed on the front or face of the written contract in not less than twelve (12) point bold type and at least two (2) points larger than the rest of type size of the remaining text in the written contract; or,

(ii) On a separate disclosure form appended to the written contract and dated, and signed by the customer and the licensed alarm company representative who made the sale.

(2) **Manager.**

(A) Each application for licensure as a manager shall include verification of at least eight thousand (8,000) hours of experience in the burglar alarm business. The experience shall include 4000 hours verified/or licensed experience as a Burglar Alarm technician. ~~If applying for licensure as a burglar and fire alarm manager, 4000 hours of verified experience in each classification shall be required.~~

(B) Each licensed burglar alarm company manager shall pass an examination administered by the Department which qualifies him and determines if the applicant is sufficiently knowledgeable in burglar alarms to plan, install, repair, alter, maintain, service, sell, inspect, advertise, and monitor burglar alarm systems according to acceptable code standards.

(C) Each licensed burglar alarm company manager shall be responsible for all activities conducted within the State of Oklahoma by the multi-activity office where they are listed as manager.

(D) Each licensed burglar alarm company manager shall have a security background verification.

(3) **Technician.**

(A) Each technician shall work for a licensed burglar alarm company and under the supervision of a burglar alarm company manager.

(B) Each technician shall pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable in burglar alarms to design, install, service, and sell burglar alarm systems that meet applicable code standards when installed; or in lieu of examination by the Department, an applicant for a license as a burglar alarm technician shall submit proof of Level 1 certification by ~~NBFAA/NTS~~NESA or proof of certification by another organization that offers national certification to individuals in the burglar alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter.

(C) Each technician shall have a security background verification.

(4) **Technician/Salesman Trainee.**

(A) A technician/salesman trainee shall be employed by a licensed Oklahoma burglar alarm company.

(B) A technician/salesman trainee shall work under the direct supervision of a licensed burglar alarm company manager, burglar alarm technician or a burglar alarm salesman.

(C) There shall be no more than three (3) technician/salesman trainees per burglar alarm company manager, burglar alarm technician or burglar alarm salesman per job site.

(D) Each technician/salesman trainee shall have security background verification.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed burglar alarm company and under the supervision of a burglar alarm company manager.

(B) Each salesperson shall pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable in burglar alarms to design and sell burglar alarm systems that meet applicable code standards when installed; or in lieu of examination by the Department, an applicant for a license as a burglar alarm salesperson may submit proof of Level 1 certification by ~~NBFAA/NTS~~NESA or proof of certification by another organization that offers national certification to individuals in the burglar alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter.

(C) Each salesperson shall have a security background verification.

310:205-3-4. Fire alarm license requirements

Licensing requirements for the fire alarm industry are as follows:

(1) **Company.**

(A) Each company shall employ an Oklahoma licensed fire alarm company manager who is responsible for the operations of the company's office. Any company maintaining multiple activity offices within Oklahoma shall have a licensed manager at each office regarding each regulated activity. Each company shall employ an Oklahoma licensed fire alarm company manager. After July 1, 2002, all fire alarm companies applying for initial licensure or any fire alarm company which changes managers or ownership shall comply with section 310:205-3-4 (2)(H) of this chapter. After July 1, 2003, all fire alarm companies will comply with section 310:205-3-4 (2)(H) of this chapter.

(B) A licensed fire alarm technician or manager shall be on site for any work being performed.

(C) A company whose manager only holds a limited fire alarm manager license shall be issued a limited fire alarm company license.

(D) A company whose manager holds an unlimited fire alarm manager license shall be issued an unlimited fire alarm company license.

(E) A company with a limited fire alarm company license shall only offer to, or engage in the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarms for use in Residential Building and manufactured housing.

(F) A company with an unlimited fire alarm company license may offer to, or engage in the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarm systems for any residential or commercial use.

(G) Any equipment installed by a company as part of a fire alarm system shall be listed by Underwriters Laboratories, Factory Mutual or any other nationally recognized testing entities for such purpose.

(H) A fire alarm company may operate multiple activity offices provided each office has the same name and ownership of the parent company and shall operate in compliance with 310:205-3-4(1)(A). The company will notify the department of the physical address and telephone number for each multiple activity office in accordance with 59 O.S. Section 1800.10.

(I) A properly licensed fire alarm technician or manager of a properly licensed alarm company shall perform the initial testing, inspection, or certification of the entire fire alarm system, and that licensed alarm company shall assume full responsibility for the installation of the alarm system.

(2) **Manager.**

(A) Each application for licensure as a fire alarm manager shall include verification of at least eight thousand (8,000) hours of experience in the fire alarm business. The experience shall include 4000 hours verified/or licensed experience as a fire alarm technician. ~~If applying for licensure as a burglar and fire alarm manager, 4000 hours of verified experience in each classification shall be required.~~ If applying for limited fire alarm manager, experience must show 4000 hours limited technical experience. If applying for unlimited fire alarm manager, experience must show 4000 hours unlimited technical experience.

(B) Each manager shall pass an examination administered by the Department which qualifies him and determines if the applicant is sufficiently knowledgeable in fire alarms to plan, install, repair, alter, maintain, service, sell, inspect, advertise, and monitor fire alarm systems according to acceptable code standards.

(C) Each licensed company manager shall be responsible for all activities of the office they are listed as manager for within the State of Oklahoma.

(D) Each licensed company manager shall have a security background verification.

(E) A manager with a limited fire alarm manager license shall only offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarm systems for use in Residential Building and manufactured housing.

(F) A manager with an unlimited fire alarm manager license may offer to, engage in, or supervise the planning, installation, repair, alteration, maintenance, service, sale, inspection, or advertisement of fire alarm systems for any residential or commercial use.

(G) An applicant for initial licensure as, or renewal of, an unlimited, fire alarm manager license shall submit proof of NICET II, technical sub-field Fire Alarm Systems, certification, ~~NBFAA/NTS~~NESA Level ~~IIB~~II Fire Installation & Wiring Codes and NESA Level II Electronics certification or certification by another organization that offers national certification

to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter. After July 1, 2002, an applicant for initial licensure as an unlimited fire alarm manager license shall submit proof of NICET II, technical sub-field Fire Alarm Systems, certification; or ~~NBFAA/NTS Level IIB Fire Systems Installation Standards, certification NBFAA/NTS Level IIB Controls & Communications, certification and Level IIA Advanced Electronics, certification; or NBFAA/NTS Level IIB Fire Systems Installation Methods and Level IIA Advanced Electronics,~~NESA Level II Fire Installation & Wiring Codes and NESA Level II Electronics certification; or proof of certification by another organization which offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter. After July 1, 2003, an applicant for initial licensure as, or renewal of, an unlimited fire alarm manager license shall submit proof of NICET II, technical sub-field Fire Alarm Systems, certification; or ~~NBFAA/NTS Level IIB Fire Systems Installation Standards, certification, NBFAA/NTS Level IIB Controls & Communications, certification and Level IIA Advanced Electronics, certification; or NBFAA/NTS Level IIB Fire Systems Installation Methods and Level IIA Advanced Electronics~~NESA Level II Fire Installation & Wiring Codes and NESA Level II Electronics, certification or proof of certification by another organization which offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter.

(3) **Technician.**

(A) Each technician shall work for a licensed fire alarm company and under the supervision of a fire alarm company manager.

(B) Each technician shall pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable in fire alarms to design, install, service, and sell fire alarm systems that meet applicable code standards when installed.

(C) Each technician shall have a security background verification.

(D) Each technician shall perform or supervise only fire alarm work within the fire alarm license category for which the fire alarm company is licensed.

(E) An initial applicant for a limited technician license shall be issued a limited license after successful completion of the appropriate technician examination; or in lieu of examination by the Department, an applicant for a license as a limited fire alarm technician shall submit proof of Level 1 certification by ~~NBFAA/NTS~~NESA or proof of certification by another organization that offers national certification to individuals in the limited fire alarm industry in accordance with subsection 310:205-3-2(f) of this chapter.

(F) A technician with a limited technician license shall only install, repair, alter, maintain, service, sell, or inspect fire alarm systems for use in Residential Building. A technician with a limited technician license may be a trainee on commercial installations and service work including the install, repair, alter, maintenance, service and inspections as long as he or she is under the direct supervision of a licensed unlimited technician.

(G) A technician with an unlimited technician license may install, repair, alter, maintain, service, sell, or inspect fire alarm systems for any residential or commercial use.

(H) Beginning July 1, 2000, an applicant for an initial unlimited technician license, or an applicant for renewal of an unlimited technician license, may be issued an unlimited technician license after successful completion of the appropriate technician examination and submission of proof of passing the examinations required for NICET II certification, sub-field Fire Alarm Systems; or proof of ~~NBFAA/NTS Level IIB Fire Systems Installation Standards, NBFAA/NTS Level IIB Controls and Communications, certification, and NBFAA/NTS Level IIA Advanced Electronics, certification; or NBFAA/NTS Level IIB Fire Alarm Installation Methods and Level IIA Advanced Electronics, certification~~NESA Level II Fire Installation & Wiring Codes and NESA Level II Electronics; or proof of certification by another organization which offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter.

(4) **Technician/Salesman trainee.**

(A) A technician/salesman trainee shall be employed by a licensed Oklahoma fire alarm company.

(B) A technician/salesman trainee shall work under the direct supervision of a licensed fire alarm company manager, fire alarm technician or a fire alarm salesman.

(C) There shall be no more than three (3) technician/salesman trainees per fire alarm company manager or fire alarm technician per job site.

(D) Each technician/salesman trainee shall have a security background verification.

(E) Each technician/salesman trainee shall only install, repair, alter, maintain, service, sell, or inspect fire alarm systems within the fire alarm license category for which the supervisor is licensed.

(5) **Salesperson.**

(A) Each salesperson shall work for a licensed fire alarm company and under the supervision of a fire alarm company manager.

(B) Each salesperson shall pass an examination administered by the Department which determines if the applicant is sufficiently knowledgeable in fire alarms to design and sell fire alarm systems that meet applicable code standards when installed.

(C) Each salesperson shall have a security background verification.

(D) An applicant for an initial limited salesperson license shall be issued a limited license after successful completion of the appropriate salesperson examination; or in lieu of examination by the Department, an applicant for a license as a limited fire alarm salesperson shall submit proof of certification by ~~NBFAA/NTS~~NESA or proof of certification by another organization that offers national certification to individuals in the limited fire alarm industry in accordance with subsection 310:205-2-3(f) of this chapter.

(E) Each salesperson shall design and sell only fire alarm systems in the license category for which the fire alarm company is licensed.

(F) An initial applicant for an unlimited salesperson license shall be issued an unlimited license after successful completion of the appropriate salesperson examination or submission of proof of NICET II certification, sub-field Fire Alarm Systems, or ~~NBFAA/NTS Fire Alarm Installation Methods and Life Safety Course, or NBFAA/NTS Practical Fire Alarm certification~~NESA Level II Codes and Standards, or certification by another organization which offers national certification to individuals in the fire alarm industry in accordance with subsection 310:205-3-2(f) of this Chapter.

310:205-3-6. Vehicle alarm license requirements [REVOKED]

~~Licensing requirements for the vehicle alarm industry are as follows:~~

~~(1) **Company.** Each company shall employ an Oklahoma licensed vehicle alarm company manager.~~

~~(2) **Manager.**~~

~~(A) Each manager shall be responsible for all activities of the company within the State of Oklahoma.~~

~~(B) Each manager shall have a security background verification.~~

[OAR Docket #06-1060; filed 5-23-06]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 210. BARBERS

[OAR Docket #06-1061]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Examinations
310:210-3-3. [AMENDED]
Subchapter 5. Licensing
310:210-5-8. [AMENDED]
Appendix A. Barber Student Curriculum and Hours [REVOKED]
Appendix A. Barber Student Curriculum and Hours [NEW]
Appendix C. Barber Apprentice Curriculum and Hours [REVOKED]
Appendix C. Barber Apprentice Curriculum and Hours [NEW]

AUTHORITY:
Oklahoma State Board of Health; Barber Regulations, 59 O.S., Section 61.1 et seq.
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ANALYSIS:
The proposal amends the examination prerequisite and removes the requirement for cosmetologist to serve one year as a barber. The rule that is in place makes it impossible for a cosmetologist to qualify for the barber examination prior to applying for a barber license. Another revision adopts new rule language governing the licensure of the barber apprentice and graduate-apprentices. This language would include that a graduate apprentice shall not be eligible to apply for a barber apprentice license within twelve months following the expiration of the graduate-apprentice license. The proposal would establish a requirement that all chemical products used in barbering, including but not limited to hair tonics, shampoos, conditioners, permanent wave solutions, hair coloring products, bleaching products, chemical processors, developers, activators, hair sprays, and gels shall be properly labeled. Each barber, barber apprentice, barber instructor, and graduate-apprentice shall read and follow all hazard warnings and safety precautions for all products used in the practice of barbering. This change is necessary to minimize the risk of injury from the improper application of hair products and unlabeled hair products.

Finally, the proposed new rule language amends the Appendix A with new terms and hours for the barber student curriculum. The Subject "Sanitation and Sterilization" is changed to "Safe Work Practices and Infection Control."
CONTACT PERSON
Vernon Bolz, Director, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone:(405) 271-5779, ext. 57901; facsimile: (405) 271-5286 electronic mail: vernonb@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. EXAMINATIONS

310:210-3-3. Examination prerequisite

(a) Applicants for the barber examination shall:

(1) Complete fifteen hundred (1,500) clock hours in no less than nine (9) months from an approved Oklahoma licensed barber school or college; or

(2) Complete eighteen (18) months and three thousand (3,000) clock hours as a licensed barber apprentice over a period of at least eighteen (18) months, and not more than two (2) years, under an Oklahoma licensed barber who has engaged in the practice of barbering for at least two (2) years. An applicant for examination shall not combine school and apprentice hours to meet the examination prerequisite. A barber apprentice who does not complete and file an examination application within five (5) years of completing the apprenticeship shall lose all accumulated apprenticeship hours;

(3) Hold a valid current license in good standing to practice barbering issued by another state or country which has licensure requirements that are substantially equivalent to the requirements of this state. If the documents are not written in English, the person shall provide a certified English translation; or

(4) Hold a current Oklahoma cosmetologist license pursuant to the cosmetology rules and complete a seven hundred fifty (750) hour course of study consisting of barbering techniques in a barber school or college licensed pursuant to this Chapter~~ and serve one (1) year as a barber and apply for the barber examination at that time~~; and

(5) Pay a fee established by the Board.

(b) Applicants for the barber instructor examination must possess a valid current barber license and shall:

(1) Verify four (4) years experience as a licensed barber; or

(2) Complete a six hundred (600) clock hour instructor course in no less than four (4) months from an approved Oklahoma licensed barber school or college and verify one (1) year as a licensed barber. Applicants may enroll and begin the instructor course at a licensed barber school upon passing the barber examination; and

(3) Pay a fee established by the board.

SUBCHAPTER 5. LICENSING

310:210-5-8. Barber apprentice and graduate-apprentice employment

(a) **Barber requirements for barber apprentice employment.** An Oklahoma licensed barber who employs a barber apprentice shall provide direct supervision over an apprentice for what constitutes a complete day unless the barber also employs another qualified, licensed barber, full time, for an apprentice working in the shop. The licensed supervising barber shall keep an accurate record of the apprentice hours. The supervising barber shall submit to the Department reports of hours accumulated by the barber apprentice every three (3) months. Credit shall not be allowed for any hours received before the apprentice registers with the Department. Licensed barbers employing barber apprentices shall notify the Department, in writing, within fourteen (14) days of the date when a licensed barber apprentice leaves the barber's employment.

(b) **Apprentice ratio.** No barber shall have more than one (1) licensed barber apprentice and one (1) graduate-apprentice or two (2) graduate-apprentices, if no other apprentice is employed, in each shop. If a barber apprentice goes on active military duty and another apprentice is acquired during this time, these regulations will allow the apprentice returning from active military duty to resume apprenticeship and will allow two apprentices in the shop until each apprentice's two-year registration period expires.

(c) **Barber apprentice requirements.**

(1) A barber apprentice accumulates hours based on the actual number of hours under direct supervision performing and training in the shop.

(2) A barber apprentice shall work not less than 1500 hours or more than 2000 hours during the duration of a barber apprentice license except where the provisions of OAC 310:210-5-7(a) apply.

(3) A barber apprentice work station shall be located in the same room of the shop as the supervising barber's work station.

(4) A graduate apprentice shall not be eligible to apply for a barber apprentice license within twelve months following the expiration of the graduate-apprentice license.

(d) **Hardship barber apprentice license.** A hardship barber apprentice license shall be issued only after review and approval by the Department. To qualify for a hardship apprentice license an apprentice must document circumstances beyond their control that have prevented them from obtaining the minimum required hours and months of experience while licensed for two (2) years as a barber apprentice. Upon completion and approval of the hardship barber apprentice license application, the license shall be issued.

(e) **Transfer barber apprentice license.** A transfer barber apprentice license shall be issued only after review and approval by the Department. To qualify for a transfer apprentice license an apprentice shall document the dissolution of the apprenticeship agreement by which the barber apprentice license was obtained. Upon completion and approval of the transfer barber apprentice license application, the license shall be issued.

(f) **Curriculum for barber apprentices.** The barber apprentice curriculum shall include each subject listed in OAC 310:210-9-10(b)(2). The minimum number of hours for each subject are listed in Appendix C of OAC 310:210.

(g) **Graduate-apprentice requirements.** No person shall be issued a license as a graduate-apprentice unless such person is at least sixteen (16) years of age and has completed the barber curriculum at an Oklahoma licensed barber school or college and whose application to take the Oklahoma barber examination has been accepted. A graduate apprentice shall not be eligible to apply for a barber apprentice license within twelve months following the expiration of the graduate-apprentice license.

APPENDIX A. BARBER STUDENT CURRICULUM AND HOURS [REVOKED]

APPENDIX A. BARBER STUDENT CURRICULUM AND HOURS [NEW]

SUBJECT	THEORY AND DEMO. ACTUAL PRACTICE HOURS	PRACTICE HOURS	TOTAL
Safe Work Practices & Infection Control	30	45	75
Licensing Laws	20		20
Salesmanship and Job Search	50	50	100
Shop Management	100		100
History of Barbering	35		35
Facial Massage and Treatment	15	25	40
Haircutting and Styling	80	475	555
Electricity and Light Therapy	15	10	25
Chemistry	15		15
Properties and Disorders of Skin, Scalp and Hair	10	25	35
Hair and Scalp Treatments	20	40	60
Chemical Hair Relaxing and Soft Curl Permanents	25	15	40
Men's Hairpieces	20	15	35
Shaving	5		5
Mustache and Beard Design	5	10	15
Bacteriology	15		15
Professional Image	25	25	50
Anatomy and Physiology	40		40
Implements, Tools and Equipment	20	50	70
Hair Coloring	80	70	150
Permanent Waving	15	5	20
Total Theory, Demonstration, Hours and Actual Practice			**1500**

APPENDIX C. BARBER APPRENTICE CURRICULUM AND HOURS [REVOKED]

APPENDIX C. BARBER APPRENTICE CURRICULUM AND HOURS [NEW]

SUBJECT	THEORY AND DEMO. ACTUAL PRACTICE HOURS	PRACTICE HOURS	TOTAL
Safe Work Practices & Infection Control	20	180	200
Licensing Laws	10		10
Salesmanship and Job Search	50	100	150
Shop Management	100		100
History of Barbering	25		25
Facial Massage and Treatment	25	50	75
Haircutting and Styling	200	1300	1500
Electricity and Light Therapy	10	10	20
Chemistry	15		15
Properties and Disorders of Skin, Scalp and Hair	45	80	125
Hair and Scalp Treatments	40	80	120
Chemical Hair Relaxing and Soft Curl Permanents	30	50	80
Men's Hairpieces	40		40
Shaving	10		10
Mustache and Beard Design	10	10	20
Bacteriology	15		15
Professional Image	10	25	35
Anatomy and Physiology	40		40
Implements, Tools and Equipment	40	100	140

Hair Coloring	40	100	140
Permanent Waving	40	100	140
Total Theory, Demonstration, Hours and Actual Practice			**3000**

[OAR Docket #06-1061; filed 5-23-06]

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

[OAR Docket #06-1062]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 256. Food Service Establishments [REVOKED]

AUTHORITY:
Oklahoma State Board of Health; 63 O.S. Section 1-104 et seq., Section 1-1101 et seq., and Section 1-1118 et seq.
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ANALYSIS:
The proposal revokes the present Food Service Establishments rule in anticipation of the rule being replaced by a new Chapter 257 (Food Service Establishments). The revocation of Chapter 256 and adoption of a new chapter is intended to bring Oklahoma food service rules into conformity with the 2001 edition of the Food Code published by the Food and Drug Administration and the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.
CONTACT PERSON:
Ted Evans, Chief, Consumer Protection, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, (405) 271-5243

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA STATE DEPARTMENT OF HEALTH, 1000 NE 10TH STREET, OKLAHOMA CITY, OKLAHOMA AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S. SECTION 255(B):

Subchapter 3 is revoked. It outlined duties and responsibilities of the management and personnel of a food service establishment. Those duties and responsibilities included knowledge about foodborne illnesses, reporting to management when personnel developed symptoms of gastrointestinal illness, and the duties of management when personnel were ill. Subchapter 3 included techniques and procedures for personal hygiene (handwashing techniques and requirements, hair restraints, and procedures for handling animals were some of the subjects addressed). Subchapter 5 is revoked. This subchapter included information on sources, storage, preparation, cooking, holding, and reheating of foods. The information included food science information on cooking and cooling foods to minimize the potential for potentially pathogenic bacteria to survive and grow. Cooking temperatures were formulated based upon the food product and the bacteria of concern. Cooking temperatures for ground beef (to kill Escherichia coli 0157:H7), poultry (to kill Salmonella spp.), and shell eggs (to kill Salmonella enteritidis) were specifically addressed in an effort to minimize foodborne illness. Subchapter 5 addressed techniques used in food service establishments to make products for the consumer to take home. The labeling of food products and reduced oxygen packaging were addressed. Revoked is Subchapter 7, which addressed utensils and equipment found in Food Service Establishments. Information included lead content of utensils and tableware, use of copper with acidic products, and the use of galvanized metals in equipment and utensils with the goal of minimizing the migration of toxic products to foods intended for consumers. Equipment use, design, maintenance, and cleanability were addressed in this subchapter with the goal of minimizing gastrointestinal disease through destruction of bacteria by appropriate maintenance and cleaning of utensils and equipment. Subchapter 9 is revoked. This subchapter addressed the basic public health areas of water, plumbing, and sewer. Plumbing fixture types and numbers, water system construction and maintenance, and sewage system construction and maintenance were addressed to minimize the possibility of cross contamination of foods with pathogenic bacteria from water, sewage, or personnel. Subchapter 9 also addressed storage areas for refuse and recyclables in an effort to minimize the potential for rodent and insect harborages and to maintain basic sanitation in food service establishments. Subchapter 11 is revoked. It addressed the physical facilities of food service establishments in an effort to maintain basic sanitation and prevent insect and rodent harborages within the food service establishment. Subchapter 13 is revoked. It outlined the handling, storage, and use of toxic chemicals (pesticides, cleaners, and sanitizers) in an effort to minimize the potential of adulteration of foods with toxic products. This subchapter also outlined the proper storage of personal medication and first aid supplies to minimize the potential for those products to contaminate food products. Also revoked is Subchapter 15, which outlined compliance and enforcement issues including the information requested for a variance application, the information required for a Hazard Analysis and Critical Control Plan (HACCP), responsibilities of the Department, responsibilities of the license holder, facility risk assessment, and protocols for the release of personnel from restriction or exclusion.

[OAR Docket #06-1062; filed 5-23-06]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 257. FOOD SERVICE ESTABLISHMENTS

[OAR Docket #06-1063]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 257. Food Service Establishments [NEW]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. Section 1-104 et seq., Section 1-1101 et seq., and Section 1-1118 et seq.
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Title 7: Part 56 and 136(e),(i); Title 9:, 301, 308.3(d), 317,317.2(i), Subpart B, 319, 319 Subpart A, 352, 354, 362, 381, 381.125(b), 381 Subpart N, 424.21, 424.21(b) Subpart C, 590; Title 21: 101, 101.17(g)(h), 113, 120, 120.24, 129, 130, 131 through 169, 133, 135, 141, 170 through 186, 176.3800, 181 through 186, 1030.10 and Subpart D 1240.60(d); Title 40: 141, 152 Subpart I, 152.175, and Title 50: 17 of the Code of Federal Regulations (CFR), as of April 1, 2002; The Federal Food, Drug and Cosmetic Act Sections 201(s), 201(t), 401, 403(Q)(3-5), 409, and 706; Seven United States Code 56 and 136(e)(i); The United States Department of Agriculture List of Proprietary Substances and Nonfood Compounds, Miscellaneous Publication No. 1419; The United States Food and Drug Administration Over the Counter Health-Care Antiseptic Drug Products; 2 O.S. 1991 §§ 6-183 et seq., 6-251 et seq., 6-254, 6-280.1 et seq., and 6-290.3(6) et seq.; 2 O.S. 1994 §§ 7-406 and 7-407; 63 O.S. 1991 §§ 1-1110 and 1-1135; National Shellfish Sanitation Program (NSSP), Model Ordinance, Guide for the Control of Molluscan

Shellfish; Interstate Certified Shellfish Shipper's List (ICSSL); Food Allergen Labeling and Consumer Protection Act of 2004 (Public Law 108-282); American Society of Sanitary Engineers (A.S.S.E.); OAC 252:631. Public Water Supply Operation; OAC 310:225. Bottled Drinking Water Regulations; OAC 252:626 Public Water Supply Construction Standards; Small Public OnSite Sewage Disposal Systems; OAC 252:656 Water Pollution Control Facility Construction; International Plumbing Code; NSF International; and OAC 158:50 Mechanical Industry Regulations.

Incorporating rules:

310:257-1-3

Availability:

Availability: 8:00 a.m. to 4:30 p.m., Oklahoma State Department of Health; Consumer Protection, 1000 N.E. 10th Street, Oklahoma City, OK.

ANALYSIS:

The proposed rule replaces Chapter 256, which is being revoked simultaneously with the adoption of this new chapter. The adoption of a new chapter is intended to bring Oklahoma food service rules into conformity with the 2001 edition of the Food Code published by the Food and Drug Administration and the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

Significant changes and additions to food service requirements in Chapter 257 include but are not limited to the responsibility of the person in charge to report an employee diagnosed with a foodborne disease. Requirements to prevent cross contamination through bare hand contact will be addressed. Raw shell eggs shall be received in refrigeration and maintained at 41 F. Juice packaged in a food establishment shall have a HACCP Plan for processing. Ready-to-eat, potentially hazardous food shall be date marked for food products that have been prepared, held, packaged, rewrapped or combined with additional ingredients or portions in a licensed facility. Fruits and vegetables that are cooked for hot holding shall be cooked to a temperature of 135°F. Changes in equipment requirements state that food establishments must incorporate a visual or audible alarm to signal if the detergent or sanitizer needs to be added to the system. All food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI) - Accredited certification program, must comply with the materials for construction and design for commercial equipment. There shall be a temperature measuring device with a suitable small-diameter probe that is designed and readily accessible to accurately measure the temperature in the foods such as meat patties and fish filets. There will be a procedure for obtaining a variance for nonconforming use of equipment. The owner of a food service establishment may request a variance(s) for equipment and facilities that exist prior to effective date(s) thereof; each variance may be granted only for the term of the existing license, but shall be subject to Department review and may be approved for an additional license year unless revoked by the Department. Any new construction or replacement equipment must conform to existing rules.

CONTACT PERSON:

Ted Evans, Chief, Consumer Protection, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, (405) 271-5243

DUE TO EXCESSIVE LENGTH OF THESE RULES (AS DEFINED IN OAC 655:10-7-12), THE FULL TEXT OF THESE RULES WILL NOT BE PUBLISHED. THE RULES ARE AVAILABLE FOR PUBLIC INSPECTION AT THE OKLAHOMA STATE DEPARTMENT OF HEALTH, 1000 NE 10TH STREET, OKLAHOMA CITY, OKLAHOMA AND AT THE SECRETARY OF STATE'S OFFICE OF ADMINISTRATIVE RULES. THE FOLLOWING SUMMARY HAS BEEN PREPARED PURSUANT TO 75 O.S. SECTION 255(B):

Subchapter 3 outlines duties and responsibilities of the management and personnel of a food service establishment. Those duties and responsibilities include knowledge about foodborne illnesses, reporting to management when personnel develop symptoms of gastrointestinal illness, and the duties of management when they have personnel who are ill. Subchapter 5 updates information on sources, storage, preparation, cooking, holding and reheating of foods. The information updates food science information as it relates to cooking and cooling foods to minimize the potential for potentially pathogenic bacteria to survive and grow. Temperatures have been formulated based upon the food product and the bacteria of concern. Hot hold temperature for holding food will be 135 degrees Fahrenheit. Raw shell eggs shall be received and maintained at an ambient air temperature of 41 degrees or less. Food establishments that serves a highly susceptible population, time only, rather than time in conjunction with temperature, may not be used as the public health control for raw eggs. Pre-packaged juice shall be obtained from a processor with a HACCP system, or obtained pasteurized or otherwise treated to attain a 5-long reduction of the most resistance microorganism of public health significance or bear a warning label as specified in 21 CFR Section 101.17. Shellstock tags shall remain attached to the container in which the shellstock are received until the container is empty. Subchapter 7 addresses utensils and equipment found in Food Service Establishments. The changes in equipment requirements, license holders must incorporate a visual or audible alarm to signal if the detergent or sanitizer need to be added to the system. All food equipment that is certified or classified for sanitation by an American National Standards Institute (ANSI) - Accredited certification program, must comply with the materials and construction and design for commercial equipment. A temperature measuring device with a suitable small-diameter probe that is designed to measure the temperature of thin masses shall be provided and readily accessible to accurately measure the temperature in thin foods. Subchapter 9 addresses the basic public health arenas of water, plumbing and sewer. Water from a nonpublic water system shall meet state drinking water quality standards. If not provided with an air gap, a double check valve with an intermediate vent preceded by a screen of not less than 100 mesh to 1 inch shall be installed upstream from a carbonating device and downstream from any copper in the water supply line. If approved and capable of removing the types of soils encountered in the food operations involved, automatic handwashing facilities may be substituted for handwashing lavatories in a food establishment that has at least one handwashing lavatory. Subchapter 11 addresses the physical facilities of food service establishments in an effort to maintain basic sanitation and prevent insect and rodent harborages within the food service establishment. Subchapter 13 outlines the handling, storage, and use of toxic chemicals (pesticides, cleaners, and sanitizers) in an effort to minimize the potential of adulteration of foods with toxic products. This subchapter also outlines the proper storage of personal medication and first aid supplies to minimize the potential for those products to contaminate food products. Subchapter 15 outlines compliance and enforcement issues including the information requested for a variance application, the information required for a Hazard Analysis and Critical Control Plan (HACCP), responsibilities of the Department, responsibilities of the license holder, facility risk assessment and protocols for the release of personnel from restriction or exclusion. The authorized representative of the regulatory authority who inspects a food service establishment or conducts plan review for compliance with these rules shall have the knowledge, skills, and ability to adequately perform the required duties.

[OAR Docket #06-1063; filed 5-23-06]

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

[OAR Docket #06-1049]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions

310:276-1-3. [AMENDED]

Subchapter 9. Examination Applications, Examinations, Course Approval Requirements, Instructor Requirements, Continuing Education, Denied Application Appeal, Submission of Records, and Continuing Education Reciprocity

310:276-9-2. [AMENDED]

AUTHORITY:

Oklahoma State Board of Health; Home Inspection Industry Act, 59 O.S. Sections 858-621 et seq.

DATES:

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n/a
ANALYSIS:

The proposed amendment includes new rule language designed to create a new requirement that all home inspectors shall maintain a log or record of all home inspections performed for a minimum period of five years from the date of inspection. The log shall include the name of the client, the address of the property, and the date of the inspection. The log may be a hard file or an electronic file and shall be maintained at the home inspector's principal business address. The files shall be available for review upon the request of an authorized representative of the Oklahoma State Department of Health.

The proposed amendment includes new rule language designed to create a new requirement that all home inspectors shall maintain a copy of all home inspections completed within the past 36 months. The copy may be a hard file or an electronic file and shall be maintained at the home inspector's principal business address. The files shall be available for review upon the request of an authorized representative of the Oklahoma State Department of Health.

Finally, the proposed revision amends the requirement that a home inspector applicant be required to pay his initial license fee prior to taking the examination for licensure. The proposed amendment will require applicant to pay all examination and application fees prior to examination. The license fee shall be paid upon completion of all requirements for licensure prior to licensing.

CONTACT PERSON

Vernon Bolz, Director, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299; telephone:(405) 271-5779, ext. 57901; facsimile: (405) 271-5286 electronic mail: vernonb@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

310:276-1-3. Standards of workmanship and practice

(a) **General requirements and limitations.**

(1) The inspector shall be governed by the following general requirements:

(A) Only readily accessible systems and components of homes listed in these Standards shall be required to be inspected.

(B) Only installed systems and components of homes listed in these Standards shall be required to be inspected.

(C) The inspector shall report on those systems and components inspected which, in the professional opinion of the inspector, are not in normal working order.

(D) The inspector shall report a reason why, if not self-evident, the system or component is not in normal working order.

(E) The inspector shall report the inspector's recommendations to correct or monitor the reported deficiency.

(F) The inspector shall report on any systems and components designated for inspection in these Standards which were present at the time of the Home Inspection but were not inspected and a reason they were not inspected.

(G) These Standards are not intended to limit inspectors from including other inspection services, systems or components in addition to those required by these Standards.

(H) These Standards are not intended to limit inspectors from specifying repairs and providing an opinion of the costs to cure, provided the inspector is appropriately qualified and willing to do so.

(I) These Standards are not intended to limit inspectors from excluding systems and components from the inspection if requested by the client.

(J) Beginning July 1, 2006, all home inspectors shall maintain a log or record of all home inspections performed for a minimum period of five years from the date of inspection. The log shall include the name of the client, the address of the property, and the date of the inspection, and shall maintain a copy of all home inspections completed within the past 36 months. The log may be a hard file or an electronic file and shall be maintained at the home inspector's principal business address. The files shall be available for review upon the request of an authorized representative of the Oklahoma State Department of Health.

(2) Inspections performed in accordance with these Standards are not technically exhaustive, will not identify concealed conditions or latent defects, and are applicable to buildings with four or fewer dwelling units and their garages or carports.

(3) The inspector is not required to perform any action or make any determination unless specifically stated in these Standards, except as may be required by lawful authority.

(4) Inspectors are not required to determine the condition of systems or components which are not readily accessible, the remaining life of any system or component, the strength, adequacy, effectiveness, or efficiency of any system or component, the causes of any condition or deficiency, the methods, materials, or costs of corrections, future conditions including, but not limited to, failure of systems and components, the suitability of the property for any specialized use, compliance with any regulatory requirements other than this Chapter (codes, regulations, laws, ordinances, etc.), the market value of the property or its marketability, the advisability of the purchase of the property, the presence of potentially hazardous plants

or animals including, but not limited to wood destroying organisms or diseases harmful to humans, the presence of any environmental hazards including, but not limited to toxins, carcinogens, noise, and contaminants in soil, water, and air, the effectiveness of any system installed or methods utilized to control or remove suspected hazardous substances, the operating costs of systems or components, or the acoustical properties of any system or component.

(5) Inspectors are not required to offer or perform any act or service contrary to law, perform engineering services, perform work in any trade or any professional service other than home inspection, or warranties or guarantees of any kind.

(6) Inspectors are not required to operate any system or component which is shut down or otherwise inoperable, any system or component which does not respond to normal operating controls, or shut-off valves.

(7) Inspectors are not required to enter any area which will, in the opinion of the inspector, likely be dangerous to the inspector or other persons or damage the property or its systems or components, or the under-floor crawl spaces or attics which are not readily accessible.

(8) Inspectors are not required to inspect underground items including, but not limited to underground storage tanks or other underground indications of their presence, whether abandoned or active, systems or components which are not installed, decorative items, systems or components located in areas that are not entered in accordance with these Standards, detached structures other than garages and carports, or common elements or common areas in multi-unit housing, such as condominium properties or cooperative housing.

(9) Inspectors are not required to perform any procedure or operation which will, in the opinion of the inspector, likely be dangerous to the inspector or other persons or damage the property or its systems or components, move suspended ceiling tiles, personal property, furniture, equipment, plants, soil, snow, ice, or debris, or dismantle any system or component, except as explicitly required by these Standards.

(b) **Structural system inspection requirements.**

(1) The inspector shall inspect the structural components including foundation and framing, by probing a representative number of structural components where deterioration is suspected or where clear indications of possible deterioration exist. Probing is not required when probing would damage any finished surface or where no deterioration is visible.

(2) The inspector shall describe the foundation and report the methods used to inspect the under-floor crawl space,the floor structure, the wall structure, the ceiling structure, and the roof structure and report the methods used to inspect the attic.

(3) The inspector is not required to provide any engineering service or architectural service, or offer an opinion as to the adequacy of any structural system or component.

(c) **Exterior inspection requirements.**

(1) The inspector shall inspect the exterior wall covering, flashing and trim, all exterior doors, attached decks, balconies, stoops, steps, porches, and their associated railings, the eaves, soffits, and fascias where readily accessible from the ground level, the vegetation, grading, surface drainage, and retaining walls on the property when any of these are likely to adversely affect the building, and the walkways, patios, and driveways leading to dwelling entrances.

(2) The inspector shall describe the exterior wall covering.

(3) The inspector is not required to inspect screening, shutters, awnings, and similar seasonal accessories, fences, geological, geotechnical or hydrological conditions, recreational facilities, outbuildings, seawalls, break-walls, and docks, and erosion control and earth stabilization measures.

(d) **Roof system inspection requirements.**

(1) The inspector shall inspect the roof covering, the roof drainage systems, the flashings, the skylights, chimneys, and roof penetrations.

(2) The inspector shall describe the roof covering and report the methods used to inspect the roof.

(3) The inspector is not required to inspect antennae, interiors of flues or chimneys which are not readily accessible, or other installed accessories.

(e) **Plumbing system inspection requirements.**

(1) The inspector shall inspect the interior water supply and distribution systems including all fixtures and faucets, the drain, waste and vent systems including all fixtures, the water heating equipment, the vent systems, flues, and chimneys, the fuel storage and fuel distribution systems, and the drainage sumps, sump pumps, and related piping.

(2) The Inspector shall describe the water supply, drain, waste, and vent piping materials, the water heating equipment including the energy source, and the location of main water and main fuel shut-off valves.

(3) The inspector is not required to inspect, the clothes washing machine connections, the interiors of flues or chimneys which are not readily accessible, wells, well pumps, or water storage related equipment, water conditioning systems, solar water heating systems, fire and lawn sprinkler systems, or private waste disposal systems.

(4) The inspector is not required to determine whether water supply and waste disposal systems are public or private, the quantity or quality of the water supply, or operate safety valves or shut-off valves.

(f) **Electrical system inspection requirements.**

(1) The Inspector shall inspect the service drop, the service entrance conductors, cables, and raceways, the service equipment and main disconnects, the service grounding, the interior components of service panels and sub panels, the conductors, the overcurrent protection devices, all readily accessible installed lighting fixtures, switches, ceiling fans, and receptacles, the ground fault circuit interrupters, and accessible wiring and splicing including the basement and attic.

(2) The Inspector shall describe the amperage and voltage rating of the service, the location of main disconnect(s) and sub panels, and the wiring methods.

(3) The Inspector shall report the presence of solid conductor aluminum branch circuit wiring, and the absence of smoke detectors.

(4) The inspector is not required to inspect the remote control devices unless the device is the only control device, the alarm systems and components, the low voltage wiring, systems and components, the ancillary wiring, systems and components not a part of the primary electrical power distribution system, or measure amperage, voltage, or impedance.

(g) **Heating system inspection requirements.**

(1) The inspector shall inspect the installed heating equipment, the vent systems, flues, and chimneys.

(2) The inspector shall describe the energy source, and the heating method by its distinguishing characteristics.

(3) The inspector is not required to inspect the interiors of flues or chimneys, which are not readily accessible, the humidifier or dehumidifier, the electronic air filter, the solar space heating system, or determine heat supply adequacy or distribution balance.

(h) **Air conditioning systems inspection requirements.**

(1) The inspector shall inspect the installed central and through-wall cooling equipment.

(2) The inspector shall describe the energy source, and the cooling method by its distinguishing characteristics.

(3) The inspector is not required to inspect electronic air filters, or determine cooling supply adequacy or distribution balance.

(i) **Interior inspection requirements.**

(1) The inspector shall inspect the readily accessible walls, ceilings, and floors, the steps, stairways, and railings, the countertops and a representative number of installed cabinets, and the readily accessible doors and windows, garage doors and garage door openers, and the following installed household appliances: garbage disposal, stove, cook top, dishwasher, vent hood, and free-standing stove.

(2) The inspector is not required to inspect the paint, wallpaper, and other finish treatments, the carpeting, the window treatments, the central vacuum systems, the household appliances not listed in OAC 310:276-1-3(i)(1), or recreational facilities.

(j) **Insulation and ventilation inspection requirements.**

(1) The inspector shall inspect the insulation and vapor retarders in unfinished spaces, the ventilation of attics and foundation areas, and the mechanical ventilation systems.

(2) The inspector shall describe the insulation and vapor retarders in unfinished spaces, and the absence of insulation in unfinished spaces at conditioned surfaces.

(3) The inspector is not required to disturb insulation or vapor retarders, or determine indoor air quality.

(k) **Fireplaces and solid fuel burning appliances inspection requirements.**

(1) The inspector shall inspect the vent systems, flues, and chimneys and the readily accessible portion of the firebox.

(2) The inspector shall describe the fireplaces and solid fuel burning appliances, and the chimneys.

(3) The inspector is not required to inspect the interiors of flues or chimneys, the firescreens and doors, the seals and gaskets, the automatic fuel feed devices, the mantels and fireplace surrounds, the combustion make-up air devices, or the heat distribution assists whether gravity controlled or fan assisted.

(4) The inspector is not required to ignite or extinguish fires, determine draft characteristics, or move fireplace inserts or stoves or firebox contents.

SUBCHAPTER 9. EXAMINATION APPLICATIONS, EXAMINATIONS, COURSE APPROVAL REQUIREMENTS, INSTRUCTOR REQUIREMENTS, CONTINUING EDUCATION, DENIED APPLICATION APPEAL, SUBMISSION OF RECORDS, AND CONTINUING EDUCATION RECIPROCITY

310:276-9-2. Examinations

(a) Home inspection license examinations may include, without limitation, written questions, consisting of open book, closed book and problems, based on current national standards, and other related questions.

(b) The maximum grade value of each part of the examination shall be 100 points. A passing score is 70% or more on each part.

(c) Each applicant shall pay ~~all examination and license fees~~ the examination fee before undertaking any examination. Reexamination fees shall be the same as the initial examination fees.

(d) Unless authorized by the Committee, only examinees shall be permitted in the examination area.

(e) Applicants shall present positive identification before undertaking an examination.

(f) Any applicant who fails an examination must wait thirty (30) days before retaking the home inspection examination.

(g) An examinee cheating or fraudulently representing an applicant shall immediately be expelled from the examination. A written record of the proceedings shall be made and become a part of the applicant's file. The Committee shall determine when the applicant may retake the exam, which time shall be no fewer than three hundred sixty-five (365) days.

[OAR Docket #06-1049; filed 5-23-06]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 355. SMOKING IN PUBLIC PLACES AND INDOOR WORKPLACES

[OAR Docket #06-1050]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 355. Smoking in Public Places and Indoor Workplaces [AMENDED]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. Supp. 2003, Section 1-1521 et seq.
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The proposed rules amend Chapter 355 by deleting requirements for written smoking policies and by adding requirements to help assure that smoking rooms will comply with the Smoking in Public Places and Indoor Workplaces Act and for signage and to outline compliance steps consistent with the Administrative Procedures Act.
CONTACT PERSON:
Bob Miner, Clean Indoor Air Program Coordinator, Tobacco Use Prevention Service, Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK 73117-1299, telephone (405) 271-3619

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

310:355-1-1. Purpose and scope

This Chapter implements the Smoking in Public Places and Indoor Workplaces Act and specifies how compliance with the Act will be accomplished. All definitions and other provisions in the Act apply to this Chapter.

310:355-1-2. Policy development [REVOKED]

~~(a) The state or local governmental agency or the person who owns or operates a public place shall develop and maintain, for public access, a written policy which describes the criteria for designating smoking and nonsmoking areas and describes the methods for preventing smoking in nonsmoking areas.~~

~~(b) The policy of educational institutions shall include at least the following:~~

~~(1) An explanation of the rationale for preventing tobacco use (i.e., tobacco is the leading cause of death, disease, and disability);~~

~~(2) Prohibition against tobacco use by students, all school staff, parents, and visitors on school property, including the buildings and grounds, between the hours of 7:00 AM and 4:00 PM, in school vehicles, and at school sponsored functions;~~

~~(3) Procedures for communicating the policy to students, all school staff, parents or families, visitors, and the community;~~

~~(4) Provisions for enforcing the policy; and~~

~~(c) An educational facility may designate smoking areas outside the building for use of adults during certain activities function including but not limited to athletic contest.~~

310:355-1-3. Signs [REVOKED]

~~Signs shall be designed and posted in a reasonable manner to inform persons of the locations of smoking and nonsmoking areas as well as smoke free buildings, areas or campuses.~~

310:355-1-4. Implementation [REVOKED]

~~The person who is in charge and in control of a public place shall be responsible for implementing and enforcing the written policy in that public place.~~

310:355-1-5. Administrative penalties [REVOKED]

~~Violations of the Smoking in Public places which occurs in public places licensed by the Department will result in a statement of violation of state law and may result in the assessment of an administrative penalty under the specific licensing law and following the procedure thereunder. The administrative penalty may be imposed against the facility or the employee of the facility.~~

310:355-1-6. Definitions

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

"Act" means the Oklahoma Smoking in Public Places and Indoor Workplaces Act *[63:1-1521 et seq].*

"Building" means an entire free standing structure enclosed or predominantly enclosed by exterior walls.

"Department" means the Oklahoma State Department of Health.

"Eating establishment" means an establishment licensed by the Department under Chapter 256 or any Chapter adopted

to replace Chapter 256 that is primarily engaged in preparing and selling food, exclusive of low-point beer and alcoholic beverages, for immediate consumption on or off the premises, based upon gross receipts of the establishment.

"Nonsmoking area" or **"nonsmoking space"** means a smokefree area or space.

"Public transportation" means *transportation services, facilities and equipment with multiple passenger capabilities, available to the public on a scheduled or demand basis including intercity, regional and city bus, minibus, van pool, car pool and taxicab services, and commuter rail services. [69:4005]*

"Recirculate" means movement of air or smoke from one area to another either mechanically by way of the heating, air conditioning and ventilation system or by other means of circulation, drifting, transfer or migration.

"Restaurant" means *any eating establishment regardless of seating capacity. [63:1-1522.7]*

"Secondhand smoke" means the aerosol produced from combustion of tobacco products---consisting of a combination of many different gases, types of particulate matter, and semi-volatile organic compounds, visible and invisible, odorless and with odors---including smoke exhaled by smokers, smoke from the burning tip of a cigarette or other tobacco product, and materials escaping through cigarette paper.

"Smoke" means smoke from combustion of tobacco products, including secondhand smoke.

"Smokefree area" or **"smokefree space"** means an area or space within or outside a building where smoking is prohibited. Within a building that is not entirely exempt from the Act *[63:1-1521 et seq]*, if smoking is permitted anywhere in the building, the air in the smokefree areas inside the building is protected from secondhand tobacco smoke from the smoking spaces by a combination of direct exhaust from the smoking spaces to the outside, full enclosure surrounding the smoking spaces, and sufficient negative air pressure in the smoking spaces relative to the smokefree areas to prevent the escape of smoke from the smoking spaces to any smokefree areas.

SUBCHAPTER 3. SMOKING PROHIBITIONS AND EXEMPTIONS

310:355-3-1. Indoor prohibition and exemptions

To protect the health of nonsmokers, no smoking shall be permitted inside public places or indoor workplaces except under certain limited situations specifically provided in 63:1-1523.

310:355-3-2. Public transportation prohibition

No smoking shall be permitted in any vehicle used to provide public transportation.

310:355-3-3. Outdoor prohibitions at restaurants

No smoking shall be permitted outside, including on a deck or patio, within 15 feet of an exterior public doorway to a restaurant or any air intake to a restaurant.

310:355-3-4. Outdoor prohibitions at educational facilities

No smoking shall be permitted outside on the premises of a public or private educational facility offering any programs for students from early childhood education or kindergarten through grade 12, except as allowed in 63:1-1523.B.

SUBCHAPTER 5. SITUATIONS IN WHICH SMOKING MAY BE PERMITTED

310:355-5-1. Smoking spaces

Smoking spaces are those spaces where smoking is permitted as provided in 63:1-1523, including (1) smoking rooms within restaurants, (2) smoking rooms in other public places and indoor workplaces, and (3) exempted places as listed in 63:1-1523(G) that elect to permit smoking, provided such exempted places either occupy an entire building or meet the requirements for a smoking room under subchapters 7, 9, 11, 13 and 15 of this Chapter with respect to any nonsmoking spaces within the same building.

310:355-5-2. Requirements for smoking spaces

Smoking rooms, as well as other smoking spaces, must meet the conditions in subchapters 7, 9, 11, 13 and 15 of this Chapter.

310:355-5-3. No required smoking

No public place or indoor workplace is required to permit smoking. Any such place may prohibit all smoking.

310:355-5-4. Exempted spaces occupying an entire building

Exempted places as listed in 63:1-1523(G) that occupy an entire building so that smoke cannot escape to adjacent indoor nonsmoking spaces are exempt from the rules in this Chapter.

SUBCHAPTER 7. PLANS REVIEW AND INSPECTIONS

310:355-7-1. Plans review by the Department

The Department may review plans for smoking rooms to assist the proprietor, if requested. This review may assist in identifying obvious design deficiencies, but it cannot assure that the installed and operating smoking rooms will comply with these rules.

310:355-7-2. Inspections

Personnel of the Department, including employees and others designated by the Commissioner of Health, shall have access to the premises for inspections, announced or unannounced, including examination and testing for compliance and including access to smokefree areas and smoking spaces.

SUBCHAPTER 9. SMOKING ROOM ENCLOSURE

310:355-9-1. Fully enclosed

The enclosure for a smoking room shall be continuous including floor, ceiling and all sides so that smoke is contained within the smoking room and away from smokefree areas.

310:355-9-2. Door opening and closure

Any tendency for air to escape from the smoking room because of doors opening or closing shall be counterbalanced by increased exhaust ventilation or other means to assure that air containing tobacco smoke is kept within the smoking room and prevented from recirculating to nonsmoking areas.

310:355-9-3. Transfer air vents

Transfer air vents may be part of the enclosure to allow flow of air from the adjacent nonsmoking areas into the smoking room as a result of the negative air pressure in the smoking room. Such vents shall automatically close when airflow into the smoking room stops, to prevent recirculation of air from the smoking room to nonsmoking areas.

SUBCHAPTER 11. SMOKING ROOM NEGATIVE AIR PRESSURE AND SMOKE CONTAINMENT

310:355-11-1. Negative pressure and full enclosure relationship

Negative air pressure shall be provided continuously while a smoking room is in use and until it has been cleared as specified in section 3 of this subchapter, to assure that the flow of air is from smokefree spaces into the smoking room. The more that normal leakage occurs, such as through cracks and under doors, the greater will be the direct exhaust required to provide adequate negative air pressure to meet the conditions in OAC 310:355-13-1.

310:355-11-2. Negative air pressure requirements with changing occupancy and activity

(a) Exhaust from and ventilation to a smoking room can be reduced with reduced occupancy, as permitted by local mechanical codes, providing that sufficient negative air pressure is maintained to satisfy OAC 310:355-13-1.

(b) As activity in a smoking room increases, causing more frequent opening and closing of the doors, greater negative air pressure shall be utilized, if needed, to contain smoke within the smoking room and prevent its recirculation to nonsmoking areas.

310:355-11-3. Negative air pressure after smoking ends

After smoking ends, negative air pressure must be maintained at levels required to satisfy the requirements of OAC 310:355-13-1 until tobacco smoke components are cleared from the air.

310:355-11-4. Successive smoking and nonsmoking uses of a smoking space

If a space used at one time as a smoking room or other smoking space is to be used as a smokefree area at a subsequent time, the space must first be cleared of tobacco smoke components.

SUBCHAPTER 13. SMOKING ROOM EVALUATION FOR COMPLIANCE

310:355-13-1. Compliance

For a public place or indoor workplace with a smoking room or other smoking space to be in compliance with the Act, no smoke shall escape or be recirculated to any nonsmoking areas.

310:355-13-2. Testing

Smoking rooms and spaces may be examined and tested for compliance by Department personnel, including employees and others designated by the Commissioner of Health, as part of normal inspection processes or in response to complaints, as provided in OAC 310:355-7-2.

SUBCHAPTER 15. PRESENCE OF SMOKE AND NEGATIVE AIR PRESSURE

310:355-15-1. Visual indications and odors

Observations of tobacco smoke or odors of tobacco smoke in nonsmoking areas may be an indicator of smoke in these areas and a basis for air quality testing pursuant to 310:355-15-2 or 310:355-15-3.

310:355-15-2. Airflow into the smoking room or other smoking space

The direction of airflow through an open doorway to a smoking room can be observed, with airflow into the room indicating negative air pressure with respect to the nonsmoking areas. The rate of airflow required into a smoking room or other smoking space shall comply with sections 9-2, 11-1, 11-2, 11-3, and 13-1 of this Chapter.

310:355-15-3. Detecting smoke by instrument

For purposes of measuring presence or absence of secondhand smoke by instrument, if necessary, an indicator of tobacco smoke widely accepted by the scientific community such as fine respirable suspended particles or nicotine measurements will be used.

SUBCHAPTER 17. SIGNAGE

310:355-17-1. Entrances to buildings where smoking is prohibited

All buildings that are public places and where smoking is prohibited inside the entrance pursuant to the Act shall have posted at each such entrance a conspicuous sign or decal at least 4" x 2" in size clearly stating that smoking or tobacco use is prohibited or that a smokefree environment is provided. Signs provided by the Department for this purpose shall meet this requirement.

310:355-17-2. Entrances to smoking rooms

(a) The owner or operator of a place with a smoking room shall post outside each entrance to a smoking room a sign at least two inches by four inches identifying the space inside as a smoking room.

(b) Signs shall be in place within 30 days of the effective date of these rules.

310:355-17-3. Sign contents for entrances to smoking rooms

Signs outside smoking rooms shall be white text on red or other highly visible contrasting colors including at least the words "SMOKING ROOM" in letters at least 1/2 inch high.

310:355-17-4. Entrances to other smoking spaces within shared buildings

(a) The owner or operator of a place exempted from the Act, which shares a building with nonsmoking spaces and which elects to permit smoking within its exempted space, shall post outside each interior entrance from a nonsmoking space to its smoking space a sign at least two inches by four inches identifying the space inside as a space in which smoking is permitted.

(b) Signs shall be in place within 30 days of the effective date of these rules.

(c) Commencing 30 days after these rules become effective, as exempted places establish new smoking spaces inside buildings shared with nonsmoking spaces, this signage shall be in place prior to occupancy.

SUBCHAPTER 19. DUTIES OF OWNER OR OPERATOR

310:355-19-1. Signage

For any indoor public place, the owner or operator shall see that signage is posted as required in Subchapter 17 of this Chapter.

310:355-19-2. Required intervention in public places

(a) When the owner or operator or an employee in a public place observes smoking in an area where smoking is prohibited, the owner, operator or operator's designee shall ask the smoker to refrain from smoking.

(b) When anyone reports smoking in violation of the Act to the owner, operator or an employee of an establishment, the owner, operator or operator's designee shall ask the smoker to refrain from smoking.

310:355-19-3. Compliance by employees

Employers shall be responsible for compliance by their employees with these rules.

SUBCHAPTER 21. COMPLIANCE

310:355-21-1. Enforcement by political subdivisions

Any provision of these rules may, pursuant to 63 O.S.§' 1-215, be enforced in the manner provided herein by any City/County Health Department. Cities and incorporated towns of the State of Oklahoma may, pursuant to the provisions of 63 O.S. § 1-209, incorporate these rules in their respective ordinances by reference.

310:355-21-2. Complaint resolution

(a) Any person who observes a violation of this Chapter may report the violation to the owner, operator or employee of the place where the smoking has occurred and/or may report the condition to the Department or local law enforcement.

(b) Complaints received by the Department may result in the issuance of a letter stating the nature and description of the complaint lodged and providing information regarding Oklahoma's laws on smoking and the health hazards related to secondhand smoke. The letter shall request that the responsible person respond to the Department within ten (10) calendar days with information as to how the condition causing or creating the complaint will be resolved.

(c) Based upon the complaint, the response received and any other evidence that may be available to the Department, the Department may determine whether a violation of this Chapter has occurred.

(d) If the Department determines that a violation has occurred, the Department may issue a warning letter to the responsible person and seek other remedial measures authorized by law.

310:355-21-3. Enforcement proceedings

The Department may initiate enforcement proceedings against any responsible party whom the Department has reason to believe is presently in violation of this Chapter or the Act, by imposing administrative penalties including fines, seeking injunctive relief in the district court, and/or by referring the complaint to the district attorney for criminal prosecution.

310:355-21-4. Administrative hearings and appeals

(a) Any hearing requested under this Chapter shall be conducted in accord with the Oklahoma Administrative Procedures Act ("Oklahoma APA") and Chapter 2 of this title. The Department must prove by a preponderance of the evidence that the responsible person has violated a provision of this

Chapter or the Act in order to assess an administrative penalty against the responsible person.
(b) Any final order of the Department may be appealed to the district court by an aggrieved party within thirty (30) days as provided in Article II of the Oklahoma APA [75 O.S., §§ 308a *et seq*].

310:355-21-5. Nursing homes and employees of nursing facilities

In instances of violations of the Act by a nursing home or employee of a nursing home, following notice and hearings as provided in this Subchapter, the Department may assess an administrative penalty against the facility and/or individual in the amount of $50.00 for the first offense within a one-year period, $100.00 for the second offense within a one-year period, and $200.00 for a third or subsequent offense within a one-year period.

[OAR Docket #06-1050; filed 5-23-06]

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

[OAR Docket #06-1051]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Rules of Professional Conduct
310:400-5-1. [AMENDED]
310:400-5-3. [AMENDED]
Subchapter 7. Application for Licensure
310:400-7-2. [AMENDED]
310:400-7-2.1. [AMENDED]
Subchapter 9. Licensure Examinations
310:400-9-1. [AMENDED]
Subchapter 11. Supervised Experience Requirements
310:400-11-1. [AMENDED]
310:400-11-2. [AMENDED]
310:400-11-3. [AMENDED]
310:400-11-4. [AMENDED]
310:400-11-5. [AMENDED]
Subchapter 15. Issuance and Maintenance of License
310:400-15-3. [AMENDED]
310:400-15-4. [AMENDED]
310:400-15-5. [AMENDED]
310:400-15-6. [AMENDED]
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This proposal amends requirements for LMFTs to notify clients when LMFT services can no longer be provided based on specified circumstances. The proposal amends requirements for services in forensic settings by requiring LMFTs to obtain consent before interviewing a minor, to refrain from counseling when acting as a neutral contributor, to maintain confidentiality on matters not intended to be used in a forensic setting, and the proposal defines fact witness testimony. This proposal adds eligibility requirements for the licensing exam, and requires criminal background checks as part of the application process. Requirements relating to supervision are amended, including a description of forms, an increase in the number of candidates allowed in individual supervision, new continuing education requirements for supervisors, a change in reporting requirements, new observation and consultation requirements to ensure candidates are practicing within their scope, and additional penalties for non-compliance with supervision requirements. The proposal establishes an interim renewal schedule, changes the timing of audits to coincide with renewals, clarifies permanent expirations, and clarifies testing requirements for endorsement applicants. These changes are intended to enhance client care and are based on recommendations from the LMFT Advisory Board.
CONTACT PERSON:
Nena West, Director, Professional Counselor Licensing, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-6030; facsimile: (405) 271-1918; electronic mail: nenaw@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1 (A) WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. RULES OF PROFESSIONAL CONDUCT

310:400-5-1. Responsibility to clients

(a) LMFTs are dedicated to advancing the welfare of families and individuals, including respecting the rights of those persons seeking their assistance, and making reasonable efforts to ensure that their services are used appropriately.
(b) LMFTs shall not discriminate against or refuse professional service to anyone on the basis of race, gender, religion, or national origin.
(c) LMFTs are cognizant of their potentially influential position with respect to clients, and they shall not exploit the trust and dependency of such persons. LMFTs therefore shall avoid extra therapeutic relationships with clients that could impair their professional judgment or increase the risk of exploitation. When extra-therapeutic relationships cannot be avoided, LMFTs shall take appropriate professional

precautions to insure that judgment is not impaired and that no exploitation occurs. Examples of such extra therapeutic relationships include, but are not limited to, business or close personal relationships with clients. Sexual intimacy with clients is prohibited. Sexual intimacy with former clients for two years following the termination of therapy is prohibited.

(d) LMFTs shall not use their professional relationship with clients to further their own interests.

(e) LMFTs respect the right of clients to make decisions and help them to understand the consequences of those decisions. LMFTs shall clearly advise a client that a decision on marital status is the responsibility of the client.

(f) LMFTs shall continue therapeutic relationships only so long as it is reasonably clear that clients are benefiting from the relationship.

(g) LMFTs shall assist persons in obtaining other therapeutic services if a marital and family therapist is unable or unwilling, for appropriate reasons, to see a person who has requested professional help.

(h) LMFTs shall not abandon or neglect clients in treatment without making reasonable arrangements for the continuation of such treatment by other appropriate professionals as necessary and indicated.

(i) When an LMFT becomes cognizant of a disability or other condition that may impede, undermine or otherwise interfere with the LMFTs duty of responsibility to the client, including a suspension of the LMFTs license or any other situation or condition described in subchapter 5 of these rules, the LMFT shall promptly notify the client in writing of the presence or existence of the disability or condition and take reasonable steps to timely terminate the therapeutic relationship consistent with the provisions of paragraphs (g) and (h) herein.

(~~i~~j) LMFTs shall obtain informed consent of clients before taping, recording, or permitting third party observation of their activities.

310:400-5-3. Professional competence and integrity

(a) LMFTs are dedicated to maintaining high standards of professional competence and integrity.

(b) LMFTs are presumed to have violated high standards of integrity or competence if they:

(1) are convicted of a felony;

(2) are convicted of a misdemeanor (related to their qualifications or functions);

(3) engage in conduct which could lead to conviction of felonies, or misdemeanors related to their qualifications or functions;

(4) have their licenses or certificates suspended or revoked; or

(5) are no longer competent to practice marital and family therapy because they are impaired due to physical or mental causes or the abuse of alcohol or other substances.

(c) LMFTs shall seek appropriate professional assistance for their own personal problems or conflicts that are likely to impair their work performance and their clinical judgment.

(d) LMFTs, as teachers and supervisors, are dedicated to maintaining high standards of scholarship and presenting information that is accurate.

(e) LMFTs shall remain abreast of new developments in family therapy knowledge and practice through both educational activities and clinical experiences.

(f) LMFTs shall not engage in sexual or other harassment or exploitation of clients, students, trainees, supervisees, employees, colleagues, research subjects, or actual or potential witnesses or complainants in ethical proceedings.

(g) LMFTs shall not attempt to diagnose, treat, or advise on problems outside the recognized boundaries of their competence.

(h) LMFTs shall prevent the distortion or misuse of their clinical and research findings.

(i) LMFTs are aware that, because of their ability to influence and alter the lives of others, they must exercise special care when making public their professional recommendations and opinions through testimony or other public statements.

(j) LMFTs shall protect the welfare of the client by storing and/or destroying, when appropriate, client files.

(k) LMFTs shall not, under normal circumstances, offer professional services to clients concurrently receiving services from another professional except with the knowledge of the professional.

(l) LMFTs shall display their original, current license certificate in a prominent place in the primary location of their practice.

(m) LMFTs shall keep the Department updated regarding changes in mailing address, phone number and place of employment. Failure to do so may place the license in jeopardy due to missed renewal notices and other important communications.

(n) LMFT candidates and licensees may not perform forensic services, which include, but are not limited to, assessments, interviews, consultations, custody evaluations, reports, or expert testimony, or other such activity that is undertaken or conducted by the candidate or licensee in contemplation that the results may, or are intended to be, later furnished to a trier of fact or other decision maker, except under the following conditions:

(1) LMFT candidates and licensees must demonstrate competence by certification, education or experience in the subject matter relevant to the issues in question and must certify in writing that they have complied with all applicable provisions of the Rules and Regulations described in Sections 310:400-5-1(i), 310:400-5-2(d) and 310:400-5-3(e),(g),(h),(i), and (n) of this Chapter.

(2) LMFT candidates and licensees shall prepare a written report and include a separate section therein containing the author's findings and conclusions relative to their analysis. Additionally, the candidate or licensee must provide to the person who is the subject of their forensic analysis, and such other person or persons who has/have a legally recognizable right in the subject matter of the proceeding, which may be directly adversely affected by the findings and conclusions made by the candidate or licensee, a copy of the written report at no cost to the person

or persons entitled to receive a copy of the written report pursuant to this section. The copy(ies) must be provided at least ten (10) days prior to the report's publication unless otherwise required by law or court order.

(3) LMFT candidates and licensees shall maintain written records, in a form or format that is legible or readable to third persons, of all contacts and information received and used in the preparation of their report.

(4) LMFT candidates and licensees must conduct a thorough examination of the person who is the subject of their forensic analysis, and such other person or persons who has/have a legally recognizable right in the subject matter of the proceeding, which may be directly adversely affected by the findings and conclusions made by the candidate or licensee, and must utilize a "face-to-face" interview of the person who is the subject of the forensic analysis, or any other such person who may be directly adversely affected by the findings and conclusions made by the candidate or licensee.

(5) LMFT candidates and licensees must base their findings and conclusions only upon information gained by appropriate and lawful means. Interviews of minor children must be preceded by written consent from the joint-custodial parents or from the custodial parent or from the legal guardian or from the legal custodian appointed by the Court.

(6) LMFT candidates and licensees who provide ~~counseling~~ therapy services for a client ~~shall limit their role to~~may only provide fact witness testimony in forensic matters involving that client, unless otherwise required by law or court order. LMFT candidates and licensees who provide mediation, parent coordinating assistance or any other neutral participation, may not undertake to provide therapy to any person(s) involved or directly affected by the LMFT candidate's or licensee's role as a neutral participant. Fact witness testimony means evidentiary statements that are limited to direct observations of the LMFT candidate or licensee and shall not include conclusions, opinions or recommendations.

(7) Assessments, interviews, consultations, custody evaluations, reports or other activity not performed in contemplation that the results would be furnished to a trier of fact or decision maker, must be kept confidential and cannot be utilized in the formation or publication of an opinion by the candidate or licensee.

(o) An LMFT, LMFT candidate, or applicant for LMFT licensure, in connection with a license application or an investigation conducted by the Department pursuant to OAC 310:400-17-3, shall not:

(1) knowingly make a false statement of material fact;

(2) fail to disclose a fact necessary to correct a misapprehension known by the LMFT, LMFT candidate or applicant for licensure to have arisen in the application or the matter under investigation; or

(3) fail to respond to a demand for information made by the Department or any designated representative thereof, unless a request for a protective order has been first made pursuant to the provisions of Chapter 2 of this title, in which case the LMFT, LMFT candidate or applicant may await the decision concerning the issuance or denial of a protective order before making any response.

SUBCHAPTER 7. APPLICATION FOR LICENSURE

310:400-7-2. Application procedures

(a) **General.**

(1) The purpose of this section is to insure that all applicants meet those requirements specified in Section 1925.6 of the Act.

(2) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official Department forms.

(3) The Department will not consider an application as officially submitted until receipt of the Application, application fee, official graduate transcripts, three (3) Document of Recommendation Forms, ~~and~~ Internship/Practicum Documentation Form, and completed criminal background check. The fee must accompany the Application Form.

(4) The Department must receive all required application materials at least 60 days prior to the date the applicant wishes to take the examination.

(b) **Application materials.** The purpose of this section is to list the materials required in the application process. All forms must be completed in full by the applicant, as per the instructions on the following individual forms:

(1) Application form.

(2) Official ~~university~~graduate transcript.

(3) Documents of recommendation.

(4) Internship/practicum documentation form.

(5) Two (2) classifiable sets of fingerprints.

(6) Fees.

(c) **Application forms**

(1) Application form - identifying information; graduate education and course work; possession of other credentials; professional ethics and conduct; notarization.

(2) Internship/Practicum Documentation form - identifying information; time, place, location of practicum

(3) Document of Recommendation - identifying information; ratings of ethical and professional characteristics; circumstances and time period submitter has know applicant

(4) Supervision Agreement - supervisor and supervisee agree to terms set forth for the accrual of supervised experience; a reproduction of the regulation regarding supervised experience

(5) Evaluation of Supervised Experience document - identifying information; time, place and duration of supervised experience; percentage of time spent in different counseling activities; supervisor's rating of professional activity; supervisor's comment section, and record of supervised experience.

(6) On-Site Supervisor Verification form - identifying information; name of applicant; place of employment;

on-site supervisor information; a reproduction of the regulation regarding supervision accrued in a private setting.

(7) Two (2) classifiable sets of fingerprints.

(d) **Negative references.** The Advisory Board may ask any applicant for licensure as an LMFT, whose file contains negative references of substance, to come before the Advisory Board for an interview before the licensure designation process may proceed.

310:400-7-2.1. Re-application procedures

(a) Re-application for permanently expired license.

(1) Re-application after license expires for non-renewal shall include the following documents:

(A) Application form,

(B) Three (3) Documents of Recommendation,

(C) Supervision Agreement, ~~and~~

(D) On-Site Supervisor Verification Form,

(E) New Application Fee, and

(F) Two (2) classifiable sets or fingerprints.

(2) Applicant shall re-take two examinations:

(A) The Licensing Examination in Marital and Family Therapy (Professional Examination Service) or another equivalent examination as determined by the Department, and

(B) An oral and/or written examination covering psychopathology and the LMFT law and regulations as approved by the Department.

(3) The Internship/Practicum Documentation Form on file shall carry over to a new application.

(4) All previously submitted and approved Supervised Experience shall carry over to a new application.

(5) Applicant shall obtain approved supervision until the exams are taken and passed. Failure to do so may constitute a violation of OAC Rule 310:400-17-7.

(b) **Re-application for revoked license.**

(1) Re-application after license is revoked as a result of administrative action shall include the following documents:

(A) Application form,

(B) Official university or college transcript,

(C) Three (3) Documents of recommendation.

(D) Internship/Practicum Documentation form,

(E) Supervision Agreement, ~~and~~

(F) On-Site Supervisor Verification Form,

(G) New Application Fee, and

(H) Two (2) classifiable sets of fingerprints.

(2) Applicant shall re-take two examinations:

(A) The Licensing Examination in Marital and Family Therapy (Professional Examination Service) or another equivalent examination as determined by the Department, and

(B) An oral and/or written examination covering psychopathology and the LMFT law and regulations as approved by the Department.

(3) All previously submitted and approved Supervised Experience shall not carry over to a new application.

(c) **Re-application for voided application.**

(1) Re-application after application is voided for failure to take scheduled examinations or after the eligible applicant fails an examination and does not take subsequent scheduled examinations shall include the following documents:

(A) Application form,

(B) Three (3) Documents of Recommendation,

(C) Supervision Agreement, ~~and~~

(D) On-Site Supervisor Verification Form,

(E) New Application Fee, and

(F) Two (2) classifiable sets of fingerprints.

(2) Applicant shall take two examinations:

(A) The Licensing Examination in Marital and Family Therapy (Professional Examination Service) or another equivalent examination as determined by the Department, and

(B) An oral and/or written examination covering psychopathology and the LMFT law and regulations as approved by the Department.

(3) The Internship/Practicum Documentation Form on file shall carry over to a new application.

(4) All previously submitted and approved Supervised Experience shall carry over to a new application.

(5) Applicant shall obtain approved supervision until the exams are taken and passed. Failure to do so may constitute a violation of OAC Rule 310:400-17-7.

(d) **Re-application for denied application.**

(1) Re-application after application has been denied shall ~~included~~include the following documents:

(A) Application form,

(B) Official university or college transcripts,

(C) Three (3) Documents of Recommendation,

(D) Internship/Practicum Documentation form,

(E) Supervision Agreement, ~~and~~

(F) On-Site Supervisor Verification Form,

(G) New Application Fee, and

(H) Two (2) classifiable sets of fingerprints.

(2) Application materials shall be reviewed by the LMFT Advisory Board.

(3) Applicant shall be required to take necessary examinations.

(4) Applicant shall be required to accrue an additional 500 hours of supervised experience.

(5) Internship/Practicum Documentation Form on file shall carry over to a new application.

(6) All previously submitted and approved Supervised Experience shall carry over to a new application.

(7) Applicant shall obtain approved supervision until the exams are taken and passed. Failure to do so may constitute a violation of OAC Rule 310:400-17-7.

SUBCHAPTER 9. LICENSURE EXAMINATIONS

310:400-9-1. Eligibility

An LMFT applicant is eligible to take the licensing examination following the submission and approval of:

(1) Application Form and fee

(2) Practicum/Internship Documentation Form
(3) Official transcript(s) showing completion of all academic requirements listed in Subchapter 7 of this Chapter~~; and~~
(4) Three (3) Document of Recommendation Forms
(5) Two (2) classifiable sets of fingerprints; and
(6) examination fee.

SUBCHAPTER 11. SUPERVISED EXPERIENCE REQUIREMENTS

310:400-11-1. Supervisor and supervisee responsibilities

Supervisor and Supervisee shall be jointly responsible for:
(1) insuring the requirements under this subchapter are fulfilled. Any failure to comply may result in the loss of supervision hours, denial of licensure, ~~or~~ initiation of formal complaint procedures, and/or loss of approved supervisor status.
(2) insuring the client's right to confidentiality is protected and the rules of the supervisor's and supervisee's respective employers are adhered to during the course of supervision.

310:400-11-2. Acceptable supervised experience

Supervised experience is acceptable when:
(1) it begins after all applicable academic requirements as stated in Subchapter 7 have been completed, and supervision agreement has been approved by the Department.
(2) official application for licensure has been made. This includes Application, application fee, Internship/Practicum Documentation Form, official graduate transcript, three (3) Document of Recommendation Forms, completed criminal background check, On-Site Supervisor Verification Form, and Supervision Agreement. Applicants who have met part or all of supervision experience requirements for clinical membership in AAMFT will be considered to have met part or all of the supervision requirements for licensure in Oklahoma.
(3) it consists of the performance of therapy activities as described in Section 1925.2, subsection 7 and 9 of the LMFT Act and contains the following characteristics:
(A) supervision focuses on the raw data from a supervisee's continuing clinical practice, which may be available to the supervisor through a combination of direct observation, co-therapy, written clinical notes, and audio and video recordings and the LMFT Act and Regulations.
(B) supervision is a process clearly distinguishable from personal psychotherapy, and is contracted in order to serve professional/vocational goals.
(C) individual supervision ~~should~~shall be face-to-face with one supervisor and one ~~supervisee~~or two supervisees.
(D) group supervision may be done with up to six supervisees and a supervisor.
(4) supervised experience hours may be accrued in academic, governmental, or private practice settings.
(5) supervised experience may be accrued in a private for-profit or private not-for-profit therapy setting, only if:
(A) The LMFT Candidate works at the same location as a person licensed in the State of Oklahoma as a Licensed Marital and Family Therapist, Licensed Professional Counselor, Licensed Behavioral Practitioner, Psychologist, Clinical Social Worker or Psychiatrist who directs and is responsible for the professional duties of the LMFT Candidate; and
(B) The LMFT Candidate is receiving supervision for licensure from an approved LMFT supervisor who is not required to work at the same location as the LMFT Candidate.

310:400-11-3. Supervisor qualifications

(a) In order to be approved as a supervisor for therapists seeking MFT licensure, an individual must:
(1) be an American Association for Marriage and Family Therapy approved Supervisor familiar with Oklahoma LMFT Act and Rules duly promulgated, or
(2) be an LMFT
(A) with two (2) years of experience in marital and family therapy beyond the number of years of experience required for licensure and
(B) who has successfully completed a graduate course in therapist supervision (at least 45 contact hours) or equivalent course of study acceptable to the Department. This equivalent course of study should consist of workshops in marriage and family therapy supervision in combination with directed study of the marriage and family therapy supervision literature. Fifteen (15) of the 45 clock hours should be in a class or workshop format which includes a minimum of four supervisors-in-training; the other 30 clock hours should be reserved for the directed study. Directed study must be approved and monitored by an Approved Supervisor.
(b) Approved LMFT Supervisors are required to complete a minimum of three (3) clock hours, every three (3) years, of continuing education in therapy supervision specific to Oklahoma law provided by the LMFT Advisory Board, or its designee.

310:400-11-4. Duration of supervised experience

(a) Work experience under supervision must extend over a minimum of 24 months. This ~~work experience must be full-time, defined as a minimum of twenty-four hours per week of~~ marital and family therapy related experience must include a minimum of 1000 hours of direct client contact. (b) Supervision sessions:
(1) ~~shall~~should be scheduled weekly and shall be ~~one and one half (1 1/2) hours in length~~ no less than 6.25 hours of supervision for each 42 hours of direct client contact. No more than 42 hours of direct client contact can be counted in a one month period of time, or
(2) may be arranged on a different schedule upon:

(A) written request of the supervisor and supervisee in advance, and

(B) approval of the schedule by the Department.

(c) Total number of face-to-face supervision hours must be at least 150 ~~over the 24 month period of supervision~~. Supervision in group sessions shall equal no more than 75 hours of the total requirement.

~~(d) The total number of hours of direct client contact shall be no less than 1000 hours.~~

(d) Supervisors shall perform at least two (2) observations, (live or tape) per each six (6) month evaluation period for each supervisee.

(e) Approved supervisors shall consult with on-site supervisor at least once per supervisee during each reporting period.

310:400-11-5. Documentation of supervised experience

(a) An LMFT Supervision Agreement between supervisor and supervisee as well as the On-Site Supervisor Verification form must be received and approved by the Department prior to the accrual of supervision hours.

(b) Semi-annual documentation of supervision hours, ~~and~~ evaluation of competence, date of observations (live or tape), and date of consultation between approved supervisor and on-site supervisor must be submitted by the supervisor and co-signed by the supervisee on official Supervision Evaluation Forms.

SUBCHAPTER 15. ISSUANCE AND MAINTENANCE OF LICENSE

310:400-15-3. License renewal

(a) **Responsibility.** Each LMFT is responsible for renewing his/her license before the expiration date.

(b) **Initial licensing period.** The renewal date of the original license shall be two (2) years from the last day of the month in which the license was originally issued.

(c) **Annual renewal.** Subsequent renewals will be yearly, on or before January 1. License fees will be prorated on a quarterly basis for the first renewal.

(d) **Interim renewal.** The notice for the initial renewal shall solicit the required continuing education documentation and invoice the LMFT for the interim period between the original renewal date and the following December 31 so that subsequent renewals shall be on a calendar year basis. The renewal notice shall inform the licensee of the number of continuing education hours required by December 31. Fees and continuing education hours shall be prorated according to the schedule below.

(1) For a license expiring during January, February or March the following shall apply:

(A) The renewal fee shall be $100.00; and

(B) Continuing education of 20 hours shall be due by December 31.

(2) For a license expiring during April, May or June the following shall apply:

(A) The renewal fee shall be $75.00; and

(B) Continuing education of 15 hours shall be due by December 31.

(3) For a license expiring during July, August or September the following shall apply:

(A) The renewal fee shall be $50.00; and

(B) Continuing education of 10 hours shall be due by December 31.

(4) For a license expiring during October or November, the following shall apply:

(A) The renewal fee shall be $25.00; and

(B) Continuing education of 5 hours shall be due by December 31.

(5) Licenses expiring in December are not prorated.

(~~d~~e) **Requirements for renewal.** Requirements for renewal are:

(1) Compliance with the Act and Board rules.

(2) Documentation of the required continuing education. (See 310:400-15-4 for information regarding C.E.).

(3) Payment of the renewal fee(s).

(~~e~~f) **Display of renewal certificate.** License renewal verification cards shall be displayed on the original (or replaced) license certificate.

310:400-15-4. Continuing education requirements

(a) **Purpose.** The purpose of the requirements in this Section is to establish the continuing education requirements necessary for license renewal.

(b) **Number of hours required.**

(1) Licensees shall complete and furnish documentation to the Department of twenty (20) clock hours of acceptable continuing education per year. One college credit hour is equal to fifteen (15) clock hours.

(2) A minimum of three (3) clock hours of continuing education hours must be in mental health ethics.

(3) Approved LMFT Supervisors are required to complete a minimum of three (3) clock hours, every three (3) years, of continuing education in therapy supervision specific to Oklahoma law provided by the LMFT Advisory Board, or its designee.

(c) **Acceptable continuing education.** Continuing education is acceptable to the Department when it:

(1) approximates the content of any of the academic areas listed under Subchapter 7 of this Chapter.

(2) is presented by a person licensed or certified by therapy related professions.

(3) is presented by a licensed or certified member of a non-therapy field (i.e. medicine, law) if the content of the presentation is therapy related and falls within the presenter's area of training.

(4) takes place in the context of a college course, in-service training, institute, seminar, workshop, conference or a Department pre-approved home study course.

(d) **Continuing education accrual from teaching.** Continuing education may also be accrued when the LMFT teaches in programs such as institutes, seminars, workshops, and conferences, when the content conforms to section

310:400-15-4(c) of this subchapter, provided that such teaching is not required as part of the LMFT's regular employment. Two hours of C.E. is credited for each hour taught.

(e) **Professional audience.** Continuing education, whether received or presented by the LMFT must be targeted toward a professional audience.

(f) **Documentation of attendance.** LMFT's shall retain verification of attendance documents for all C.E. hours claimed for a period of two (2) years. Acceptable C.E. verification of attendance documents are:

(1) an official continuing education validation form furnished by the presenter, or,

(2) a letter on the sponsoring presenter's letterhead giving the name of the program, location, dates, subjects taught, total number of hours attended, participant's name and presenter's name and credentials, or,

(3) an official college transcript showing courses or audit credit.

(4) (For teaching) a letter on sponsoring agency's letterhead giving the name of the program, location, dates, subject taught and total number of hours taught.

(g) **Submission of continuing education roster.** LMFT's shall submit a Continuing Education Roster (not individual verification of attendance documents) with the license renewal fee. Rosters may be obtained from the LMFT office. Only C.E. accrued in the preceding license renewal period is acceptable.

(h) **Audit of continuing education submissions.** In ~~January~~ November of each year, the Department will randomly select from two (2) to twenty-five (25) percent of the number of LMFT's on active status the previous year for an audit of their claimed Continuing Education credits. These selected LMFT's must then provide the Department with verification of all credits claimed on their Continuing Education Roster ~~within thirty (30) days following receipt of the audit notice~~on or before the renewal deadline. The Department may, at ~~it's~~its discretion, audit and require verification of any credits claimed which it may consider questionable or fraudulent.

(i) **Penalty for failure to submit continuing education.** Failure to fulfill the C.E. requirement by the renewal date renders the license in suspension. All rights granted by the license are null and void until the requirement is fulfilled and a late renewal fee is paid. The LMFT has 12 months from the date of suspension to become reinstated. If not reinstated, the license shall be revoked.

(j) **Submission of fraudulent continuing education.** The submission of fraudulent C.E. hours will be reviewed by the Department for disciplinary action and may result in suspension or revocation of license.

(k) **Responsibility.** The licensee is ultimately responsible for providing or arranging for sponsors to provide the information necessary for the Department to make a determination of the suitability of the program for continuing education requirements.

310:400-15-5. Inactive status

(a) An active license may be placed on inactive status by written request and payment of a one-time twenty-five dollar ($25.00) fee. An inactive license forfeits all rights and privileges granted by the license.

(b) When a license is placed on inactive status, it remains inactive for at least one (1) year from the date of inactivation.

(c) Active status may be re-established upon payment of the current renewal fee if there are no impediments to licensure.

310:400-15-6. Late license renewal; reapplication

(a) **Renewal notification.** The Department shall mail a notice of expiration to licensee's last known address, 45 days prior to the expiration date of the LMFT's license.

(b) **Failure to renew.** If the licensee fails to renew his/her license by the expiration date:

(1) the license will expire and the rights and privileges granted by the license will be forfeited.

(2) the LMFT has the right to reinstate the license by payment of the renewal fee and the late renewal fee and fulfillment of all other renewal requirements for up to one year following the expiration of the license.

(3) licenses not renewed within the 1 year renewal period shall not be reinstated and ~~the~~ shall be permanently expired. The license must be returned to the Department.

(c) **Reapplication.** It shall be the responsibility of the former licensee to reapply for licensure. Reapplication means making application, payment of all fees, taking and passing the exam and fulfillment of all requirements for licensure in effect at the time of reapplication. No contact will be initiated by the Department.

(d) **Retirement of license.** An LMFT whose license is current and in good standing, who wishes to retire the license, may do so by informing the Department in writing and returning the license to the LMFT office. A license so retired shall not be reinstated but does not prevent a person from applying for a license at a future date.

310:400-15-9. Temporary license

Marital and Family Therapists who are currently licensed in another state, who have made application for licensure by endorsement in Oklahoma may be granted a temporary license. An applicant who has met all requirements for licensure except for the written and/or oral examination and is waiting for the first opportunity to take the first written and/or oral examination may be granted a temporary license. A temporary license is valid up to 12 months from date of issue or until a permanent license is issued or until the application is denied. Temporary licenses must be returned to the Department upon expiration or when a permanent license is issued.

[OAR Docket #06-1051; filed 5-23-06]

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

[OAR Docket #06-1052]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Forms
310:403-5-1 [AMENDED}
310:403-5-2 [AMENDED]
Subchapter 7. Rules of Professional Conduct
310:403-7-2 [AMENDED]
310:403-7-3 [AMENDED]
310:403-7-4.1 [AMENDED]
Subchapter 11. Application Procedures
310:403-11-6 [AMENDED]
310:403-11-7 [AMENDED]
310:403-11-8 [AMENDED]
310:403-11-9 [AMENDED]
310:403-11-10 [AMENDED]
310:403-11-11 [AMENDED]
Subchapter 15. Supervised Experience Requirement
310:403-15-2 [AMENDED]
310:403-15-3 [AMENDED]
310:403-15-4 [AMENDED]
310:403-15-7 [AMENDED]
Subchapter 19. Licensure Examination
310:403-19-1.1 [NEW]
310:403-19-6.1 [NEW]
Subchapter 21. Continuing Education Requirements
310:403-21-3.1 [NEW]
310:403-21-4 [AMENDED]
Subchapter 25. License and Specialty Renewal
310:403-25-11 [AMENDED]
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ANALYSIS:
This proposal amends requirements for services in forensic settings by requiring LBPs to obtain consent before interviewing a minor, to refrain from counseling when acting as a neutral contributor, and to maintain confidentiality on matters not intended to be used in a forensic setting. This proposal removes language used during the grandfathering period that is no longer in effect. The proposal requires criminal background check as part of the application process, requires LBPs to follow federal laws regarding client access to records, requires LBPs to notify clients when LBP services can no longer be provided based on specified circumstances, and establishes a requirement for supervisor responsibility to licensure candidates. This proposal adds eligibility requirements for the licensing exam, establishes the frequency exams must be taken, and adds requirements for licensure re-application. Requirements relating to supervision are amended, including description of forms, new observation and consultation requirements to ensure candidates are practicing within their scope, and additional penalties for non-compliance with supervision requirements. This proposal allows continuing education credits to be earned from teaching, changes the timing of audits to coincide with renewals, and clarifies permanent expirations. These rules are intended to enhance client care and are based on recommendations from the LBP Advisory Board.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. FORMS

310:403-5-1. Forms

Each application shall include the following ~~forms~~documents:

(1) Application Form;
(2) Official transcript, mailed from the university or college;
(3) Internship/practicum Documentation Form;
(~~3~~4) Three (3) Document of Recommendation Forms;
~~(4) Statement of Professional Disclosure;~~
~~(5) Supervision Agreement;~~
~~(6) Evaluation of Supervised Experience Form;~~
~~(7) Continuing Education Roster;~~
~~(8) Verification of Prior Professional Practice Form; and~~
~~(9) Verification of Current Professional Practice Form.~~
(5) Two (2) classifiable sets of fingerprints; and
(6) Fees.

310:403-5-2. Description of forms

(a) The Application Form requires the following:
(1) Identifying information of applicant;
(2) Possession of other credentials;
(3) Previous misconduct;
(4) Education;
(5) References;
(6) Proposed professional Practice; and,
(7) Notarization.

(b) The Internship/Practicum Documentation Form requires the following:
(1) Identifying information of applicant;
(2) Place, time, duration and nature of supervised experience;

(3) School arranging supervision and name of supervisor; and,

(4) Signature and title of supervisor.

(c) The Document of Recommendation requires the following:

(1) Identifying information of applicant;

(2) Scale of performance rating personal character and professional skills;

(3) Circumstances and time period rater has known applicant;

(4) Space for rater's comments;

(5) Identifying information of rater.

(d) The Statement of Professional Disclosure is composed of alternative forms depending on the status of the applicant, as follows.

(1) The LBP Candidate's Statement of Professional Disclosure requires the following:

(A) Explanation of LBP Candidate's responsibilities;

(B) Name and contact information for person who will be responsible for the client's records in the event of the LBP Candidate's infirmity or death;

(C) Supervisor's identifying information;

(D) Address and phone number of the Department; and,

(E) Signatures of client and LBP Candidate.

(2) The LBP's Statement of Professional Disclosure requires the following:

(A) Explanation of the LBP's responsibilities;

(B) Name and contact information for person who will be responsible for the client's records in the event of the LBP's infirmity or death;

(C) Address and phone number of the Department; and,

(D) Signatures of client and LBP.

(e) The Supervision Agreement requires the following:

(1) Statement of agreement to fulfill Subchapter 15 and consequences of violation; and

(2) Identifying information and signatures of supervisee and supervisor.

(f) The On-Site Supervisor Verification Form requires the following identifying information:

(1) Name of applicant;

(2) Place of employment;

(3) On-Site Supervisor Information;

(4) A reproduction of the regulation regarding supervision accrued in a private setting.

(~~f~~g) The Evaluation of Supervised Experience Form requires the following:

(1) Names of supervisee and supervisor;

(2) Name and location of supervision site;

(3) Duration of work experience and supervision;

(4) Types of professional activities and clients seen;

(5) Rating of quality of professional activities;

(6) Supervisor and supervisee comments; and

(7) Signatures of supervisee and supervisor.

(~~g~~h) The Continuing Education Roster requires the following:

(1) LBP's name and license number;

(2) Total number of hours accrued and LBP's signature; and

(3) Listing of workshops, sponsor, content and date of continuing education experience.

~~(h) The Verification of Prior Professional Practice Form requires the following:~~

~~(1) Identifying information of applicant;~~

~~(2) Place, nature and duration of prior practice setting;~~

~~(3) Attestation of at least twenty (20) hours per week employment as a behavioral practitioner; and~~

~~(4) Signature of applicant and person verifying practice.~~

~~(i) The Verification of Current Professional Practice Form requires the following:~~

~~(1) Identifying information of applicant;~~

~~(2) Place and nature of current practice setting;~~

~~(3) Attestation of at least twenty (20) hours per week employment as a behavioral practitioner; and~~

~~(4) Signature of applicant and person verifying practice.~~

SUBCHAPTER 7. RULES OF PROFESSIONAL CONDUCT

310:403-7-2. Competence

(a) **Behavioral health services.** LBPs shall practice only within the boundaries of their competence, based on their education, training, supervised experience, state and national professional credentials, and appropriate professional experience.

(b) **Testing.** LBPs shall know the limits of their competence and shall therefore perform only those testing and assessment services for which they have been trained. LBPs shall be familiar with related standardization and proper application and security of any technique utilized. LBPs using computer-based test interpretations shall be trained in the construct being measured and the specific instrument being used prior to using this type of computer application. LBPs shall ensure the proper use of assessment techniques by persons under their supervision.

(c) **Specialty.** LBPs shall not represent themselves as specialists in any aspect of behavioral health services, unless so designated by the Board.

(d) **Research.**

(1) LBPs shall plan, design, conduct, and report research only in a manner consistent with current, pertinent ethical principles put forth in the "Ethical Standards and Code of Conduct" governing Northamerican Association of Masters in Psychology (NAMP), federal and state laws, rules, and scientific standards governing research with human subjects.

(2) The research principles of the NAMP "Ethical Standards and Code of Conduct" are as follows:

(A) Principle 8: Research with Human and Animal Participants

(i) 8.1 Relevant research. The Masters in Psychology shall only undertake research pertaining

to human subjects when such research contributes to psychology as a science and humankind in general. On the premise of this forethought, one conducts the research with the utmost concern for the dignity and welfare of their research participants.

(ii) 8.2 Informed consent in research. The Masters in Psychology shall make certain that research participants fully understand the conditions and comprehend the general nature of the research when requesting informed consent. Research that involves deception on the part of the researcher should in general be avoided, unless the perceived outcomes far exceed any perceived minimal adverse reactions and in either case a debriefing session suitable to the research will always be conducted.

(B) Principle 10: Teaching, Training & Research Publication

(i) 10.1 Candidness in research techniques. The Masters in Psychology shall make every effort to make available any and all appropriate materials supporting research materials and to readily disseminate results for replication.

(ii) 10.2 Proper supervision. The Masters in Psychology shall maintain proper supervision of their employees, subordinates, supervisees, and research assistants in the delegation of duties and shall make every ethically appropriate effort to ensure that only those individuals competent to perform such services do so.

(e) **Impairment.** LBPs shall not offer or render professional services when their physical, mental or emotional problems are likely to harm clients or other associates. LBPs shall seek assistance for such problems, and, if necessary, limit, suspend, or terminate their professional responsibilities.

(f) **Evaluations.** LBP candidates and licensees may not perform forensic services, which include, but are not limited to, assessments, interviews, consultations, custody evaluations, reports, or expert testimony, <u>or other such activity that is undertaken or conducted by the candidate or licensee in contemplation that the results may, or are intended to be, later furnished to a trier of fact or other decision maker,</u> except under the following conditions:

(1) LBP candidates and licensees must demonstrate competence by certification, education or experience in the subject matter relevant to the issues in question and must certify in writing that they have complied with all applicable provisions of the Rules and Regulations described in Sections 310:403-7-1, 310:403-7-2(a)(f), and 310:403-7-7(f)(1)(2)(3) of this Chapter.

(2) LBP candidates and licensees shall prepare a written report and include a separate section therein containing the author's findings and conclusions relative to their analysis. Additionally, the candidate or licensee must provide to the person who is the subject of their forensic analysis, and such other person or persons who may be directly adversely affected by the findings and conclusions made by the candidate or licensee, a copy of the written report at no cost to the person or persons entitled to receive a copy of the written report pursuant to this section. The copy(ies) must be provided at least ten (10) days prior to the report's publication unless otherwise required by law or court order.

(3) LBP candidates and licensees shall maintain written records, in a form or format that is legible or readable to third persons, of all contacts and information received and used in the preparation of their report.

(4) LBP candidates and licensees must conduct a thorough examination of the person who is the subject of their forensic analysis, and such other person or persons who may be directly adversely affected by the findings and conclusions made by the candidate or licensee, and must utilize a "face-to-face" interview of the person who is the subject of the forensic analysis, or any other such person who may be directly adversely affected by the findings and conclusions made by the candidate or licensee.

(5) LBP candidates and licensees must base their findings and conclusions only upon information gained by appropriate and lawful means. <u>Interviews of minor children must be preceded by written consent from the joint-custodial parents or from the custodial parent or from the legal guardian or from the legal custodian appointed by the Court.</u>

(6) LBP candidates and licensees who provide counseling services for a client shall limit their role to fact witness in forensic matters involving that client, unless otherwise required by law or court order. <u>LBP candidates and licensees who provide mediation, parent coordinating assistance or any other neutral participation, may not undertake to provide counseling to any person(s) involved or directly affected by the LBP candidate's or licensee's role as a neutral participant.</u>

<u>(7) Assessments, interviews, consultations, custody evaluations, reports or other activity not performed in contemplation that the results would be furnished to a trier of fact or decision maker, must be kept confidential and cannot be utilized in the formation or publication of an opinion by the candidate or licensee.</u>

310:403-7-3. Client welfare

(a) **Discrimination.** LBPs shall not, in the rendering of their professional services, participate in, condone, or promote discrimination on the basis of race, color, age, gender, religion or national origin.

(b) **Records.**

(1) **Requirement of records.** LBPs shall maintain verifiable records necessary for rendering professional services to their clients for at least five (5) years beyond termination of services.

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

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

(c) **Invasion of privacy.** LBPs shall not make inquiry into persons or situations not directly associated with the client's situation.

(d) **Referral.**

(1) If LBPs determine they are unable to be of professional assistance to a client, the LBP shall not enter a behavioral health services relationship. LBPs shall refer clients to appropriate sources when indicated. If the client declines the suggested referral, the LBP shall terminate the relationship.

(2) LBPs shall not abandon or neglect clients in treatment without making reasonable arrangements for the continuation of such treatment.

(3) When an LBP becomes cognizant of a disability or other condition that my impede, undermine or otherwise interfere with the LBPs duty of responsibility to the client, including a suspension of the LBPs license or any other situation or condition described in subchapter 3 of these rules, the LBP shall promptly notify the client in writing of the presence or existence of the disability or condition and take reasonable steps to timely terminate the therapeutic relationship.

310:403-7-4.1. Responsibility to supervisees

(a) LBPs shall not exploit the trust and dependency of supervisees.

(b) LBPs are cognizant of their potentially influential position with respect to supervisees, and shall not exploit the trust and dependency of such persons. LBPs, therefore, shall avoid dual relationships that impair their professional judgment or increase the risk of exploitation. Examples of such dual relationships include, but are not limited to, provision of counseling to supervisees, and business or close personal relationships with supervisees. Sexual intimacy with current supervisees is prohibited.

(c) LBPs shall not permit supervisees to perform or to hold themselves out as competent to perform professional services beyond their training, level of experience, and competence.

(d) LBPs shall not disclose supervisee confidences to anyone, except:

(1) as mandated by law;

(2) in case of clear and imminent danger to a person or persons;

(3) where the professional counselor is a defendant in a civil, criminal, or disciplinary action arising from the supervision (in which case client confidences may be disclosed only in the course of that action);

(4) if there is a waiver previously obtained in writing, and then such information may be revealed only in accordance with the terms of the waiver.

(5) to the Department in reporting ethical or professional concerns as a part of the supervision agreement.

SUBCHAPTER 11. APPLICATION PROCEDURES

310:403-11-6. Materials required of LBP applicants ~~on and after January 1, 2002~~

In addition to the application form and fee, an applicant for LBP licensure ~~on and after January 1, 2002~~ shall file the following completed materials with the Department prior to taking the examination:

(1) Three documents of recommendation;

(2) Internship/practicum Documentation Form;

(3) Official university transcript(s); and

(4) ~~Statement of Professional Disclosure~~ Two (2) classifiable sets of fingerprints.

310:403-11-7. Re-application for expired license

(a) Re-application after license expires for non-renewal shall include the following documents:

(1) Application form,

(2) Official transcripts, mailed from the university,

(3) Document of recommendation forms,

(4) Supervision Agreement,

(5) Statement of Professional Disclosure,

(6) New Application Fee~~.~~,

(7) On-Site Supervisor Verification Form; and

(8) Two (2) classifiable sets of fingerprints.

(b) Applicant shall re-take two examinations:

(1) The Practitioner's Examination of Psychological Knowledge or another equivalent examination as determined by the Department; and

(2) The LBP State Standards Test.

(c) Internship Documentation Form on file may carry over to a new application.

(d) All previously submitted and approved Supervised Experience shall carry over to a new application.

(e) Applicant shall obtain approved supervision until the exams are taken and passed as described in Subchapter 310:403-15-2(e)(2).

310:403-11-8. Re-application for revoked license

(a) Re-application after license is revoked for administrative action shall include the following documents:

(1) Application form,

(2) Official transcripts, mailed from the university,

(3) Document of recommendation forms,

(4) Supervision Agreement,

(5) Statement of Professional Disclosure,

(6) New Application Fee~~.~~,

(7) On-Site Supervisor Verification Form, and

(8) Two (2) classifiable sets of fingerprints.

(b) Applicant shall re-take two examinations:

(1) The Practitioner's Examination of Psychological Knowledge or another equivalent examination as determined by the Department; and

(2) The LBP State Standards Test.

(c) Internship Documentation Form on file may carry over to a new application.

(d) All previously submitted and approved Supervised Experience shall not carry over to a new application.

310:403-11-9. Re-application for voided application for failure to take scheduled examinations

(a) Re-application after application is voided for failure to take scheduled examinations or after the eligible applicant fails an examination and does not take subsequent scheduled examinations shall include the following documents:

(1) Application form,
(2) Official transcripts, mailed from the university,
(3) Document of recommendation forms,
(4) Supervision Agreement,
(5) Statement of Professional Disclosure Form,
(6) New Application Fee~~.~~,
(7) On-Site Supervisor Verification Form, and
(8) Two (2) classifiable sets of fingerprints.

(b) Applicant shall take two examinations:

(1) The Practitioner's Examination of Psychological Knowledge or another equivalent examination as determined by the Department; and
(2) The LBP State Standards Test.

(c) Internship Documentation Form may carry over to a new application

(d) All previously submitted and approved Supervised Experience shall carry over to a new application.

(e) Applicant shall obtain approved supervision until the exams are taken and passed and/or until the supervision requirement is complete as described in Subchapter 310:403-15-2(e)(2).

310:403-11-10. Re-application for voided application for failure to complete supervised experience

(a) Re-application after application is voided for failure to complete the supervised experience requirement within sixty (60) months as described in Subchapter 310:403-15-2(e)(3) shall include the following documents:

(1) Application form,
(2) Official transcripts, mailed from the university,
(3) Document of recommendation forms,
(4) Supervision Agreement form,
(5) Statement of Professional Disclosure form,
(6) New Application Fee~~.~~,
(7) On-Site Supervisor Verification Form, and
(8) Two (2) classifiable sets of fingerprints.

(b) Applicant shall re-take two examinations:

(1) The Practitioner's Examination of Psychological Knowledge or another equivalent examination as determined by the Department; and
(2) The LBP State Standards Test.

(c) Internship Documentation Form may carry over to a new application

(d) All previously submitted and approved Supervised Experience shall be voided with prior application and shall not carry over to a new application.

(e) Applicant shall obtain approved supervision until the exams are taken and passed and/or the supervision requirement is complete as described in Subchapter 310:403-15-2(e)(2).

310:403-11-11. Re-application for denied application

(a) Re-application after application has been denied shall include the following documents:

(1) Application form,
(2) Official transcripts, mailed from the university,
(3) Document of Recommendation forms,
(4) Supervision Agreement,
(5) Statement of Professional Disclosure,
(6) New Application Fee~~.~~,
(7) On-Site Supervisor Verification Form, and
(8) Two (2) classifiable sets of fingerprints.

(b) Application materials shall be reviewed by the LBP Advisory Board for approval.

(c) Applicant shall be required to take necessary examinations.

(d) Applicant shall be required to accrue an additional 500 hours of supervised experience.

(e) Internship Documentation Form on file may carry over to a new application.

(f) All previously submitted and approved Supervised Experience shall carry over to a new application.

(g) Applicant shall obtain approved supervision until the exams are taken and passed as described in Subchapter 310:403-15-2(e)(2).

SUBCHAPTER 15. SUPERVISED EXPERIENCE REQUIREMENT

310:403-15-2. Duration of supervision

(a) Each applicant shall complete three (3) years or three-thousand (3000) clock hours of full time, on-the-job experience, which is supervised by an approved LBP supervisor.

(b) For each one thousand (1000) clock hours of full time, on-the-job experience, three hundred fifty (350) hours shall be direct face-to-face client contact.

(c) Weekly, face-to-face supervision shall be accrued at the ratio of forty-five (45) minutes of supervision for every twenty (20) hours of on-the-job experience.

(d) No more than one-half ($\frac{1}{2}$) of the required supervision hours may be received in group supervision.

(e) One (1) or two (2) years of supervised experience may be gained at the rate of one (1) year for each thirty (30) graduate hours in behavioral health services-related course work beyond the minimum number of required graduate semester hours.

(1) Regardless of the number of hours earned beyond the minimum number of required graduate semester hours, the LBP Candidate shall receive at least one (1) year or one thousand (1000) clock hours of supervision in the ratio described in this rule.

(2) If an LBP Candidate completes the supervised experience requirement before passing the licensure examination, the LBP Candidate shall continue to practice under LBP supervision as described in this subchapter, unless exempted by the Act, until licensed.

(3) LBP Candidates shall complete supervised experience requirements within sixty (60) months of the date of the approval of the first supervision agreement or the license application shall be voided.

(f) Approved supervisors shall perform at least two (2) observations (live or tape) per each six (6) month evaluation period for each supervisee.

(g) Approved supervisors shall consult with on-site supervisor at least once during each six (6) month evaluation period for each supervisee.

310:403-15-3. Documents required for the accrual of supervised hours

~~An LBP applicant shall accrue supervised experience only after the Department has received the applicant's official transcript(s), Internship/practicum documentation form, Supervision Agreement, Documents of Recommendation, and Statement of Professional Disclosure.~~The following documents must be received and approved by the Department before the accrual of supervised experience can begin:

(1) Application materials;

(2) Supervision agreement;

(3) Statement of professional disclosure; and

(4) On-Site Supervisor Verification Form.

310:403-15-4. Responsibility of supervisors and supervisees

The supervisor and supervisee shall be jointly responsible for the following:

(1) Ensuring the requirements under this subchapter are fulfilled. A failure to comply may result in the loss of supervision hours, denial of licensure, ~~or~~ initiation of formal complaint procedures, and/or loss of approved supervisor status.

(2) Ensuring the client's right to confidentiality is protected and rules of the supervisor's and supervisee's employer(s) are adhered to during the course of supervision.

310:403-15-7. Documentation of supervised experience

(a) ~~An applicant shall begin supervised experience only after a supervision agreement between the supervisor and LBP Candidate is approved by the Department.~~A Supervision Agreement Form between the supervisor and supervisee, Statement of Professional Disclosure Form, and the On-Site Supervisor Verification Form shall be received and approved by the Department prior to beginning the accrual of supervised hours.

(b) The supervisor and LBP Candidate shall sign and submit an "Evaluation of Supervised Experience," including documentation of observations, date of consultation between approved supervisor and on-site supervisor, and the Record of Supervised Experience on a semi-annual basis.

SUBCHAPTER 19. LICENSURE EXAMINATION

310:403-19-1.1. Eligibility

An LBP applicant is eligible to take the licensing examination following the submission of:

(1) Application form and fee;

(2) Practicum/Internship Documentation Form;

(3) Official transcript(s) showing completion of all academic requirements listed in subchapter 13, section 310:403-13-2;

(4) Three (3) Document of Recommendation Forms;

(5) Two (2) classifiable sets of fingerprints; and

(6) Examination fee.

310:403-19-6.1. Failure to apply

(a) The application may be voided if a person fails to apply for and take one of the first two examinations scheduled after the applicant has been mailed notification at last know address in writing of his/her approval for examination.

(b) The application maybe voided if a person fails to apply for and take one of the first two examinations scheduled after the applicant has failed the exam and has been mailed notification at last known address in writing of this/her approval for examination.

SUBCHAPTER 21. CONTINUING EDUCATION REQUIREMENTS

310:403-21-3.1. Continuing education accrual from teaching

Continuing education may also be accrued when the LBP teaches in programs such as institutes, seminars, workshops, and conferences, when the content conforms to 310:403-21-3 of this subchapter, provided that such teaching is not required as part of the LBPs regular employment. Two (2) hours of continuing education are credited for each hour taught. No more than five (5) hours of continuing education may be accrued per year through teaching activities. Credit will be given only for the first presentation.

310:403-21-4. Audit of continuing education submissions

~~The~~In November of each year, the Department shall randomly select from two (2) to twenty-five (25) percent of the number of LBPs on active status the previous year for an audit of their claimed continuing education credits. These selected LBPs shall provide the Department with verification of all credits claimed on their Continuing Education Roster ~~within thirty (30) days following receipt of the audit notice~~on or before the renewal deadline. The Department may, at its

discretion, audit and require verification of any credits claimed which it may consider questionable or fraudulent.

SUBCHAPTER 25. LICENSE AND SPECIALTY RENEWAL

310:403-25-11. Return of license

Licenses not reinstated within the one (1) year late renewal period shall be permanently expired and not be reinstated. ~~and the~~The license shall be returned to the Department.

[OAR Docket #06-1052; filed 5-23-06]

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

[OAR Docket #06-1053]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Rules of Professional Conduct
310:405-3-2. [AMENDED]
310:405-3-3. [AMENDED]
310:405-3-4.1. [NEW]
Subchapter 7. Application Procedures
310:405-7-1. [AMENDED]
310:405-7-2. [AMENDED]
310:405-7-4. [AMENDED]
310:405-7-5. [AMENDED]
310:405-7-6. [AMENDED]
310:405-7-7. [AMENDED]
310:405-7-8. [AMENDED]
Subchapter 9. Academic Requirements
310:405-9-2. [AMENDED]
Subchapter 11. Supervised Experience Requirement
310:405-11-1. [AMENDED]
310:405-11-2. [AMENDED]
310:405-11-5. [AMENDED]
310:405-11-6. [AMENDED]
310:405-11-7. [AMENDED]
Subchapter 15. Licensure Examinations
310:405-15-1. [AMENDED]
310:405-15-4. [AMENDED]
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Subchapter 17. Continuing Education Requirements
310:405-17-6.2. [AMENDED]
Subchapter 23. License and Specialty Late Renewal and Expiration
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ANALYSIS:
This proposal amends requirements for services in forensic settings by requiring LPCs to obtain consent before interviewing a minor, to refrain from counseling when acting as a neutral contributor, and to maintain confidentiality on matters not intended to be used in a forensic setting. The proposal requires LPCs to follow federal laws regarding client access to records, requires LPCs to notify clients when LPC services can no longer be provided based on specified circumstances, establishes a requirement for supervisor responsibility to licensure candidates, requires criminal background checks as part of the application process, and adds eligibility requirements for licensure application and re-application. Requirements relating to supervision are amended, including description of forms, new observation and consultation requirements to ensure candidates are practicing within their scope, and additional penalties for non-compliance with supervision requirements. This proposal adds eligibility requirements for the licensing exam and establishes the frequency exams must be taken. The proposal changes the timing of audits to coincide with renewals, and clarifies permanent expirations. These rules are intended to enhance client care and are based on recommendations from the LPC Advisory Board.
CONTACT PERSON:
Nena West, Director, Professional Counselor Licensing, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone:(405) 271-6030; facsimile: (405) 271-1918; electronic mail: nenaw@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. RULES OF PROFESSIONAL CONDUCT

310:405-3-2. Competence

(a) **Counseling.** LPCs shall practice only within the boundaries of their competence, based on their education, training, supervised experience, state and national professional credentials, and appropriate professional experience.

(b) **Testing.** LPCs shall know the limits of their competence and shall therefore perform only those testing and assessment services for which they have been trained. LPCs shall be familiar with related standardization and proper application and security of any technique utilized. LPCs using computer-based test interpretations shall be trained in the construct being measured and the specific instrument being used prior to using this type of computer application. LPCs shall ensure the proper use of assessment techniques by persons under their supervision.

(c) **Specialty.** LPCs shall not represent themselves as specialists in any aspect of counseling, unless so designated by the Board.

(d) **Research.** LPCs shall plan, design, conduct, and report research only in a manner consistent with current American Counseling Association Code of Ethics and Standards of Practice, pertinent ethical principles, federal and state laws, rules, and scientific standards governing research with human subjects.

(e) **Impairment.** LPCs shall not offer or render professional services when such services are impaired by physical, mental or emotional problems. LPCs shall seek assistance for problems, and, if necessary, limit, suspend, or terminate their professional responsibilities.

(f) **Evaluations.** LPC candidates and licensees may not perform forensic services, which include, but are not limited to, assessments, interviews, consultations, custody evaluations, reports, or expert testimony, or other such activity that is undertaken or conducted by the candidate or licensee in contemplation that the results may, or are intended to be, later furnished to a trier of fact or other decision maker, except under the following conditions:

(1) LPC candidates and licensees must demonstrate competence by certification, education or experience in the subject matter relevant to the issues in question and must certify in writing that they have complied with all applicable provisions of the Rules and Regulations described in Sections 310:405-3-1, 310:405-3-2(a)(f), and 310:405-3-5(f)(1)(2)(3) of this Chapter.

(2) LPC candidates and licensees shall prepare a written report and include a separate section therein containing the author's findings and conclusions relative to their analysis. Additionally, the candidate or licensee must provide to the person who is the subject of their forensic analysis, and such other person or persons who may be directly adversely affected by the findings and conclusions made by the candidate or licensee, a copy of the written report at no cost to the person or persons entitled to receive a copy of the written report pursuant to this section. The copy(ies) must be provided at least ten (10) days prior to the report's publication unless otherwise required by law or court order.

(3) LPC candidates and licensees shall maintain written records, in a form or format that is legible or readable to third persons, of all contacts and information received and used in the preparation of their report.

(4) LPC candidates and licensees must conduct a thorough examination of the person who is the subject of their forensic analysis, and such other person or persons who may be directly adversely affected by the findings and conclusions made by the candidate or licensee, and must utilize a "face-to-face" interview of the person who is the subject of the forensic analysis, or any other such person who may be directly adversely affected by the findings and conclusions made by the candidate or licensee.

(5) LPC candidates and licensees must base their findings and conclusions only upon information gained by appropriate and lawful means. Interviews of minor children must be preceded by written consent from the joint-custodial parents or from the custodial parent or from the legal guardian or from the legal custodian appointed by the Court.

(6) LPC candidates and licensees who provide counseling services for a client shall limit their role to fact witness in forensic matters involving that client, unless otherwise required by law or court order. LPC candidates and licensees who provide mediation, parent coordinating assistance or any other neutral participation, may not undertake to provide counseling to any person(s) involved or directly affected by the LPC candidate's or licensee's role as a neutral participant.

(7) Assessments, interviews, consultations, custody evaluations, reports or other activity not performed in contemplation that the results would be furnished to a trier of fact or decision maker, must be kept confidential and cannot be utilized in the formation or publication of an opinion by the candidate or licensee.

310:405-3-3. Client welfare

(a) **Discrimination.** LPCs shall not, in the rendering of their professional services, participate in, condone, or promote discrimination on the basis of race, color, age, gender, religion or national origin.

(b) **Records.**

(1) **Requirement of records.** LPCs shall maintain verifiable records necessary for rendering professional services to their clients for at least five (5) years beyond termination of services.

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

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

(c) **Dual relationships.** LPCs are aware of their influential positions with respect to clients, and do not exploit the trust and dependency of clients. LPCs shall refrain from dual relationships with clients because of the potential to impair professional judgement and to increase the risk of harm to clients. Examples of such relationships include, but are not limited to, familial, social, financial, business, professional or close personal relationships with clients. When the possibility that a dual relationship exists, LPCs shall take appropriate professional precautions such as informed consent, consultation, supervision and documentation to ensure that judgement is not impaired and no exploitation occurs.

(d) **Invasion of privacy.** LPCs shall not make inquiry into persons or situations not directly associated with the client‘s situations.

(e) **Referral.**

(1) If LPCs determine that they are unable to be of professional assistance to a client, the LPC shall not enter

a counseling relationship. LPCs shall refer clients to appropriate sources when indicated. If the client declines the suggested referral, the LPC shall terminate the relationship.

(2) LPCs shall not abandon or neglect clients in treatment without making reasonable arrangements for the continuation of such treatment.

(3) When an LPC becomes cognizant of a disability or other condition that may impede, undermine or otherwise interfere with the LPC's duty of responsibility to the client, including a suspension of the LPC's license or any other situation or condition described in subchapter 3 of these rules, the LPC shall promptly notify the client in writing of the presence or existence of the disability or condition and take reasonable steps to timely terminate the therapeutic relationship.

310:405-3-4.1. Clinical responsibility to supervisees

(a) LPCs shall not exploit the trust and dependency of supervisees.

(b)LPCs are cognizant of their potentially influential position with respect to supervisees, and shall not exploit the trust and dependency of such persons. LPCs, therefore, shall avoid dual relationships that impair their professional judgment or increase the risk of exploitation. Examples of such dual relationships include, but are not limited to, provision of counseling to supervisees, and business or close personal relationships with supervisees. Sexual intimacy with current supervisees is prohibited.

(c) LPCs shall not permit supervisees to perform or to hold themselves out as competent to perform professional services beyond their training, level of experience, and competence.

(d) LPCs shall not disclose supervisee confidences to anyone, except:

(1) as mandated by law;

(2) in case of clear and imminent danger to a person or persons;

(3) where the professional counselor is a defendant in a civil, criminal, or disciplinary action arising from the supervision (in which case client confidences may be disclosed only in the course of that action);

(4) if there is a waiver previously obtained in writing, and then such information may be revealed only in accordance with the terms of the waiver.

SUBCHAPTER 7. APPLICATION PROCEDURES

310:405-7-1. General

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

(b) Unless otherwise indicated, an applicant shall submit all required information and documentation of credentials on official Department forms.

(c) The Department will not consider an application as officially submitted until receipt of the Application Form, application fee, official transcript(s), three (3) Document of Recommendation forms, Internship/Practicum Documentation Form, and completed criminal background check. The application fee must accompany the Application Form.

(~~c~~d) ~~The applicant shall file all required application materials at least sixty (60) days prior to the date the applicant wishes to take the examination.~~The Department shall notify applicants of their test eligibility no later than 60 days after receiving and approving the required application materials.

310:405-7-2. Application materials and forms

(a) Each application shall include the following documents:

(1) Application form,

(2) Official transcript, mailed from the university or college,

(3) Three (3) Document of recommendation forms,

(4) Practicum documentation form,

(5) Two (2) classifiable sets of fingerprints, and

(~~5~~6) Fees.

(b) The Application Form requires the following:

(1) Identifying information;

(2) Possession of other credentials;

(3) Previous misconduct;

(4) Education;

(5) References;

(6) Proposed professional practice; and

(7) Notarization.

(c) The Internship/Practicum Documentation form requires the following:

(1) Identifying information; and

(2) Time, place, location of practicum.

(d) The Document of Recommendation requires the following:

(1) Identifying information;

(2) Ratings of ethical and professional characteristics; and

(3) Circumstances and time period submitter has known applicant.

(e) The Statement of Professional Disclosure requires the following:

(1) Statement providing for the applicant's disclosure of professional standing; and

(2) Statement providing for making contact with OSDH for further information.

(f) The Supervision Agreement requires identifying information of supervisee and supervisor.

(g) The On-Site Supervisor Verification Form requires identifying information as follows:

(1) Name of applicant;

(2) Place of employment;

(3) On-Site Supervisor information;

(4) A reproduction of the regulation regarding supervision accrued in a private setting.

310:405-7-4. Re-application for permanently expired license

(a) Re-application after license expires for non-renewal shall include the following documents:

(1) Application form,

(2) Official transcripts, mailed from the university or college,

(3) Document of Recommendation forms,

(4) Supervision Agreement,

(5) Statement of Professional Disclosure, ~~and~~

(6) New Application Fee~~.~~,

(7) On-Site Supervisor Verification Form, and

(8) Two (2) classifiable sets of fingerprints.

(b) Applicant shall re-take two examinations:

(1) The National Counselor Examination or another equivalent examination as determined by the Department; and

(2) The Oklahoma Legal and Ethical Responsibilities Examination.

(c) The Internship/Practicum Documentation Form on file shall carry over to a new application.

(d) All previously submitted and approved Supervised Experience shall carry over to a new application.

(e) Applicant shall obtain approved supervision until the exams are taken and passed as described in OAC Rule 310:405-11-5(h).

310:405-7-5. Re-application for revoked license

(a) Re-application after license is revoked for administrative action shall include the following documents:

(1) Application form,

(2) Official transcripts, mailed from the university or college,

(3) Document of Recommendation forms,

(4) Supervision Agreement,

(5) Statement of Professional Disclosure, ~~and~~

(6) New Application Fee~~.~~,

(7) On-Site Supervisor Verification Form, and

(8) Two (2) classifiable sets of fingerprints.

(b) Applicant shall re-take two examinations:

(1) The National Counselor Examination or another equivalent examination as determined by the Department; and

(2) The Oklahoma Legal and Ethical Responsibilities Examination.

(c) The Internship/Practicum Documentation Form on file shall carry over to a new application.

(d) All previously submitted and approved Supervised Experience shall not carry over to a new application.

310:405-7-6. Re-application for voided application for failure to take scheduled examinations

(a) Re-application after application is voided for failure to take scheduled examinations or after the eligible applicant fails an examination and does not take subsequent scheduled examinations shall include the following documents:

(1) Application form,

(2) Official transcripts, mailed from the university or college,

(3) Document of Recommendation forms,

(4) Supervision Agreement,

(5) Statement of Professional Disclosure Form, ~~and~~

(6) New Application Fee~~.~~,

(7) On-Site Supervisor Verification Form, and

(8) Two (2) classifiable sets of fingerprints.

(b) Applicant shall take two examinations:

(1) The National Counselor Examination or another equivalent examination as determined by the Department; and

(2) The Oklahoma Legal and Ethical Responsibilities Examination.

(c) The Internship/Practicum Documentation Form on file shall carry over to a new application.

(d) All previously submitted and approved Supervised Experience shall carry over to a new application.

(e) Applicant shall obtain approved supervision until the exams are taken and passed and/or until the supervision requirement is complete as described in OAC Rule 310:405-11-5(h).

310:405-7-7. Re-application for voided application for failure to complete supervised experience

(a) Re-application after application is voided for failure to complete the supervised experience requirement within sixty (60) months as described in OAC Rule 310:405-11-5(i) shall include the following documents:

(1) Application form,

(2) Official transcripts, mailed from the university or college,

(3) Document of Recommendation forms,

(4) Supervision Agreement,

(5) Statement of Professional Disclosure, ~~and~~

(6) New Application Fee~~.~~,

(7) On-Site Supervisor Verification Form, and

(8) Two (2) classifiable sets of fingerprints.

(b) Applicant shall re-take two examinations:

(1) The National Counselor Examination or another equivalent examination as determined by the Department; and

(2) The Oklahoma Legal and Ethical Responsibilities Examination.

(c) The Internship/Practicum Documentation Form on file shall carry over to a new application.

(d) All previously submitted and approved Supervised Experience shall be voided with prior application and shall not carry over to a new application.

(e) Applicant shall obtain approved supervision until the exams are taken and passed and/or until the supervision requirement is complete as described in OAC Rule 310:405-11-5(h).

310:405-7-8. Re-application for denied application

(a) Re-application after application has been denied shall included the following documents:

(1) Application form,

(2) Official transcripts, mailed from the university or college,
(3) Document of Recommendation forms,
(4) Supervision Agreement,
(5) Statement of Professional Disclosure, ~~and~~
(6) New Application Fee~~.~~,
(7) On-Site Supervisor Verification Form, and
(8) Two (2) classifiable sets of fingerprints.

(b) Application materials shall be reviewed by the LPC Advisory Board.
(c) Applicant shall be required to take necessary examinations.
(d) Applicant shall be required to accrue an additional 500 hours of supervised experience.
(e) Internship/Practicum Documentation Form on file shall carry over to a new application.
(f) All previously submitted and approved Supervised Experience shall carry over to a new application.
(g) Applicant shall obtain approved supervision until the exams are taken and passed. Failure to do so may constitute a violation of OAC Rule 310:405-31-7.

SUBCHAPTER 9. ACADEMIC REQUIREMENTS

310:405-9-2. Knowledge area required

(a) Each applicant shall possess as a part of the required sixty (60) credit hours of graduate curriculum, one (1) or more courses of at least three (3) credit hours per course in each of the following core counseling areas:

(1) Human growth and development - at least one (1) course which deals with the process stages of human intellectual, physical, social and emotional development of any of the stages of life from prenatal through old age.

(2) Abnormal human behavior - at least one (1) course which offers a study of the principles of understanding dysfunction in human behavior or social disorganization.

(3) Appraisal/assessment techniques - at least two (2) courses which deal with the principles, concepts and procedures of systematic appraisal, assessment, or interpretation of client needs, abilities, and characteristics, which may include the use of both testing and non-testing approaches.

(4) Counseling theories/methods - at least two (2) courses which survey the major theories and/or techniques of counseling.

(5) Professional orientation/ethics - at least one (1) course which deals primarily with the objectives of professional counseling organizations, codes of ethics, legal aspects of practice, standards of preparation and the role of persons providing direct counseling services.

(6) Research - at least one (1) course in the methods of social science or mental health research which includes the study of statistics or a thesis project in an area relevant to the practice of counseling.

(7) Practicum/internship - at least one (1) course of an organized practicum with at least three hundred (300) clock hours in counseling with planned experiences providing classroom and field experience with clients under the supervision of college or university approved counseling professionals.

(8) Knowledge areas - at least five (5) courses of at least three (3) credit hours each from the knowledge areas listed below.

(A) Group dynamics
(B) Life style and career development
(C) Social and cultural foundations
(D) Personality theories
(E) Crisis intervention
(F) Marriage/family counseling
(G) Addictions counseling
(H) Rehabilitation counseling
(I) Gerontology
(J) Human sexuality
(K) Counseling with children/adolescents
(L) Clinical supervision
(M) Psychopharmacology
(N) Consultation
(O) Physical and Emotional Health
(P) Specialty areas when established

(b) **Remaining courses.** Effective January 1, 2000, the remaining courses needed to meet the sixty (60) graduate-hour requirement shall be in any of the knowledge areas listed in ~~310:405-9-2(b)~~ 310:405-9-2(a).

(c) **Required content.** Effective January 1, 2000, if an applicant completes a titled course which does not meet the entire content requirements of any area named in ~~310:405-9-2(b)~~310:405-9-2(a), the applicant may be required to submit evidence to the Department that the required content was covered in portions of more than one (1) course.

SUBCHAPTER 11. SUPERVISED EXPERIENCE REQUIREMENT

310:405-11-1. Documents required prior to accrual of supervision hours

The following documents must be received by the department before the accrual of supervised experience can begin:

(1) Application materials;
(2) Supervision agreement; ~~and~~
(3) Statement of professional disclosure~~.~~;
(4) On-Site Supervisor Verification Form.

310:405-11-2. Responsibility of supervisors and supervisees

The supervisor and supervisee shall be jointly responsible for the following:

(1) Ensuring the requirements under this subchapter are fulfilled. A failure to comply may result in the loss of supervision hours, denial of licensure, ~~or~~ initiation of formal complaint procedures, and/or loss of approved supervisor status.

(2) Ensuring the client's right to confidentiality is protected and the rules of the supervisor's and supervisee's employers are adhered to during the course of supervision.

310:405-11-5. Duration of supervision

(a) Three (3) years or three-thousand (3000) clock hours of full time, on-the-job experience, which is supervised by an approved LPC supervisor, shall be completed.

(b) For each one-thousand (1000) clock hours of full time, on-the-job experience, three hundred fifty (350) hours shall be direct face to face client contact.

(c) "Full time" means at least twenty (20) hours per week.

(d) Weekly, face-to-face supervision shall be accrued under an LPC at the ratio of forty-five (45) minutes of supervision for every twenty (20) hours of on-the-job experience.

(e) "Group supervision" means an assemblage of counseling supervisees consisting of from two (2) to six (6) members and no more than one-half (2) of the required supervision hours may be received in group supervision.

(f) One (1) or two (2) years of supervised experience may be gained at the rate of one (1) year for each thirty (30) graduate hours in counseling-related course work beyond the master's degree. (Minimal educational requirements are a master's degree [at least forty-five (45) hours] or doctorate with the first forty-five (45) hours meeting the minimal educational requirements. As of January 1, 2000, minimal educational requirements are a master's degree [at least sixty (60) hours] or a doctorate with the first sixty (60) hours meeting the minimal educational requirements.)

(g) Regardless of the number of hours earned beyond the master's degree, the LPC supervisee shall receive at least one (1) year or one-thousand (1000) clock hours of supervision in the ratio described in subchapter 11, section 310:405-11-5(b-d).

(h) If an applicant completes the supervised experience requirement before passing the licensure examination, the applicant shall continue to practice under LPC supervision as described in this subchapter, unless exempted by the Act, until licensed. Failure to do so constitutes a violation of the Act and may be subject to prosecution under the District Attorney and sanction by the Commissioner of Health.

(i) Applicants shall complete supervised experience requirements within sixty (60) months of the date of the approval of the first supervision agreement or the application shall be voided.

(j) Approved supervisors shall perform at least two (2) observations (live or tape) per each six (6) month evaluation period for each supervisee.

(k) Approved supervisors shall consult with on-site supervisor at least once during each six (6) month evaluation period for each supervisee.

310:405-11-6. Documentation of supervised experience

(a) A supervision agreement form between the supervisor and supervisee, the Statement of Professional Disclosure Form, and the On-Site Supervisor Verification Form shall be received by the LPC Department prior to beginning the accrual of supervised hours.

(b) The supervisor and supervisee shall sign and submit the "Evaluation of Supervised Experience," including documentation of observations and date of consultation between approved supervisor and on-site supervisor, semi-annually.

310:405-11-7. Supervision agreement

(a) The Supervision Agreement shall include the following:

(1) ~~Supervisior~~Supervisor and ~~surpervisee~~supervisee agree to terms set forth for the ~~accural~~accrual of supervised experience; and

(2) A reproduction of the regulation regarding supervised experience.

(b) Evaluation of Supervised Experience document shall include the following:

(1) Identifying information;

(2) Time,place and duration of supervised experience;

(3) Percentage of time spent in different counseling activities;

(4) Supervisor's rating of professional activity;~~ and~~

(5) Supervisor's comment section~~.~~; and

(6) Record of supervised experience.

SUBCHAPTER 15. LICENSURE EXAMINATIONS

310:405-15-1. Eligibility

An LPC applicant ~~is~~may be eligible to ~~take~~sit for the licensing examination following the submission of:

(1) Application fee and form;

(2) Practicum/Internship Documentation Form;

(3) Official transcript(s) showing completion of all academic requirements listed in subchapter 9, section 310:405-9-2;~~ and~~

(4) ~~Examination fee or examination processing fee if the National Counselor Examination has been taken since January 1, 1995.~~Three (3) Document of Recommendation Forms; and

(5) Two (2) classifiable sets of fingerprints.

310:405-15-4. Application

(a) The Department shall mail notification of eligibility to sit for examination to the last known address of applicant ~~at least~~no later than sixty (60) days ~~prior to the date of the next scheduled examination~~ after receiving the required and completed application materials.

(b) ~~An applicant who wishes to take a scheduled examination shall complete an examination registration form and return it to the Department submitting the required fee at least thirty (30) days prior to the date of the examination.~~Upon receiving test eligibility letter from the Department, applicant shall submit examination registration materials and fees to the Department's designee.

(c) ~~The application for licensure of a person who fails to register for and take one of the first two examinations scheduled~~

~~after the applicant has been mailed notification at last known address in writing of his/her eligibility for examination, shall be voided and the applicant shall be mailed notification at last known address.~~An applicant's eligibility to sit for the exam may be valid for two years, at which time if they have not successfully passed the exams, their licensure application shall be voided and the applicant shall be mailed notification at last known address.

(d) An applicant who fails the NCE exam, may schedule additional examinations, within the two-year eligibility period, with the submission of subsequent exam registration materials and fees. The subsequent exam can be scheduled no sooner than 90 days after the prior exam.

310:405-15-8. Failure to apply

The application of a person who fails to ~~apply for and take one of the first two examinations scheduled~~apply for, sit for, and successfully pass the National Counselor Examination and the Oklahoma Legal and Ethical Responsibilities Examination, within the two-year eligibility period, after the applicant has been mailed notification at last known address in writing of his/her ~~approval~~eligibility for examination, shall be voided and the applicant shall be mailed notification at last known address.

SUBCHAPTER 17. CONTINUING EDUCATION REQUIREMENTS

310:405-17-6.2. Audit of continuing education submissions

In ~~July~~May of each year, the Department shall randomly select from two (2) to twenty-five (25) percent of the number of LPCs on active status the previous year for an audit of their claimed continuing education credits. These selected LPCs shall provide the Department with verification of all credits claimed on their Continuing Education Roster ~~within thirty (30) days following receipt of the audit notice~~on or before the renewal deadline. The Department may, at its discretion, audit and require verification of any credits claimed which it may consider questionable or fraudulent.

SUBCHAPTER 23. LICENSE AND SPECIALTY LATE RENEWAL

310:405-23-3. Return of license

Licenses not renewed within the one (1) year renewal period ~~shall not be reinstated and the~~ shall be permanently expired and shall not be reinstated. The license shall be returned to the Department.

[OAR Docket #06-1053; filed 5-23-06]

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

[OAR Docket #06-1054]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Chapter 641. Emergency Medical Services [AMENDED]
AUTHORITY:
Oklahoma State Board of Health; 63 O.S. Section 1-104; 63 O.S., Section 1-2501 et seq.
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These amendments affect more than 30 sections of the rule. The proposed revisions update definitions and add new definitions regarding various classes of practitioners, remove obsolete language, update and reorganize requirements and references for clarity, and correct syntax. Outdated requirements have been revoked and/or deleted.

The following changes have been recommended by the Oklahoma Emergency Response Development Advisory Council (OERSDAC); clarification of the purposes of the rules, updating definitions, expanding requirements for licensure application, making explicit the requirement for 24 hour operation, clarifying and expanding the approval process for new ambulance vehicles, allowing special licensure for out-of-state air ambulance providers consistent with new statutes, clarifying specialty care parameters, eliminating obsolete references to water ambulances, consolidating EMS region rules, clarifying required vehicle inspection schedules, reducing re-test fees for individual emergency medical technicians, requiring a new registry of Oklahoma certified first responders beginning in 2008, allowing fee waivers for reciprocity requests for certain veterans, requiring paramedic training programs be supervised by a paramedic, requiring paramedic schools to own their own training equipment, clarifying training, renewal and re-entry requirements for emergency medical training instructors and instructor trainers and clarifying acceptable training programs for the use of semi-automated external defibrillators.
CONTACT PERSON:
R. Shawn Rogers, Director, Emergency Medical Service, Oklahoma State Department of Health, 1000 Northeast 10th Street, Oklahoma City, OK 73117-1299 telephone: (405) 271-4027; facsimile: (405) 271-4240 electronic mail: shawnr@health.state.ok.us

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED

FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. AMBULANCE SERVICES

PART 1. GENERAL PROVISIONS

310:641-3-1. Purpose

The rules of this Subchapter are promulgated to:

(1) Establish minimum standards for the issuance and renewal~~ of licensure~~ of ambulance~~ services~~ service and emergency medical personnel certification and licensure;

(2) ~~Provide the~~Establish standards for~~ the~~ enforcement of the ~~provisions of the~~ "Oklahoma Emergency~~ Medical Service~~ Response Systems Development Act"~~.~~;

(3) ~~Carry out the provision of~~Establish minimum standards for emergency care and the transportation of ambulance patients~~.~~; and

(4) Establish minimum standards for~~ the~~ ambulance vehicles and emergency care equipment~~ to be carried on board each vehicle~~.

~~(5) Carry out the provision of minimum standards for emergency care and the transportation of ambulance patients~~

310:641-3-2. Definitions

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

"ACLS" means Advanced Cardiac Life Support.

"Act" means the "Oklahoma Emergency Response Systems Development Act".

"Advanced Life Support (ALS) Emergency Medical Services Training Program" means an organization approved by the Department to conduct the following ALS training: Emergency Medical Technician Intermediate, Emergency Medical Technician Intermediate Refresher, Emergency Medical Technician Paramedic, Emergency Medical Technician Paramedic Refresher, Continuing Education at the Emergency Medical Technician Intermediate and Paramedic levels, and such other courses of instruction that may be designated by the Department.

"AMLS" means Advanced Medical Life Support.

"ATLS" means Advanced Trauma Life Support.

"Base Station" means the primary location from which ambulances and crews respond to emergency calls on twenty-four (24) hour basis. The Base Station may include the principal business office, living quarters for personnel, training institution, and/or communications center.

"Basic Life Support (BLS) Emergency Medical Services Training Program" means an organization approved by the Department to conduct the following BLS training: First Responder, First Responder Refresher, Emergency Medical Technician Basic, Emergency Medical Technician Basic Refresher, Continuing Education at the Emergency Medical Technician Basic level, and such other courses of instruction that may be designated by the Department.

"BLS" means Basic Life Support, and includes cardiopulmonary resuscitation (CPR) and utilization of Semi-Automated advisory defibrillator (SAAD).

"BTLS" means Basic Trauma Life Support.

"Board" means the State Board of Health.

"Certificate" means any certification or certificate issued by the Department, pursuant to the Act, or this Chapter.

"Clinical Coordinator" means the individual designated in writing by a training program as responsible for coordination and supervision of clinical experiences.

"Clinical Experience" means all supervised learning experiences required and included as part of a training course in which the student provides or observes direct patient care. This includes vehicular experiences with a licensed ambulance service.

"Council" means the Oklahoma Emergency Response Systems Development Advisory Council.

"Department" means the State Department of Health.

"Distance Learning" is classroom instruction of didactic portions of curriculum which requires simultaneous participation of the instructor and students but does not require the students to be physically present in the same location as the instructor.

"Distributive Education" is instructional delivery of didactic portions of curriculum which is independent of time and place.

"DOT" means the United States Department of Transportation.

"Division" means the Emergency Medical Services Division.

"Emergency medical personnel" means all certified and licensed personnel which provide emergency medical care for an ambulance service.

"EMS" means Emergency Medical Services.

"Emergency medical technician" EMT means an individual licensed by the Department as Basic, Intermediate, Advanced Cardiac, or Paramedic.

~~**"EMT-AC"** means Emergency Technician Advanced Cardiac as licensed pursuant to the Act, or this Chapter.~~

"EMT-B" means Emergency Medical Technician-Basic as licensed pursuant to the Act, or this Chapter.

"EMT-I" means Emergency Medical Technician-Intermediate as licensed pursuant to the Act, or this Chapter.

"EMT-P" means Emergency Medical Technician-Paramedic as licensed pursuant to the Act, or this Chapter.

"Emergency Medical Dispatcher (EMD)" means a person trained using a Department-approved curriculum for the management of calls for emergency medical care.

"Emergency transfer" means the movement of an acutely ill or injured patient from the scene to a health care (pre-hospital),or the movement of an acutely ill or injured patient from one health care facility to another health care facility (inter-facility).

"En Route Time" means the elapsed time from the time the emergency call is received by the EMS agency until the

ambulance and complete crew is en route to the scene of the emergency.

"License" means any license issued by the Department, pursuant to the Act, or this Chapter.

"NHTSA" means National Highway Traffic Safety Administration.

"National Registry" means the National Registry of Emergency Medical Technicians, Columbus Ohio.

"Non-emergency transfer" means the movement of any patient in an ambulance other than an emergency transfer.

"PALS" means Pediatric Advanced Life Support.

"PEPP" means Pediatric Education for the Prehospital Professional.

"PHTLS" means Prehospital Trauma Life Support.

"PPC" means Prehospital Pediatric Care.

"Preceptor" means an individual with education, experience and expertise in healthcare and approved by a training program to supervise and provide instruction to EMS students during clinical experiences.

"Program Administrator" means the individual designated in writing by a training program as responsible for all aspects of EMS training.

"Program Coordinator" means the individual designated in writing by a training program as responsible for all aspects of a specified course(s) or EMS program. This individual shall have at least two (2) years experience of full-time equivalent employment as a healthcare practitioner.

"Response time" means the time from which a call is received by the EMS agency until the time the ambulance and complete crew arrives at the scene, unless the call is scheduled in advance.

"Statewide Ambulance coverage area" means a map of all ambulance response areas, maintained by the Department.

"Stretcher aid van" means any ground vehicle which is or should be approved by the State Commissioner of Health, which is designed and equipped to transport individuals on a stretcher or gurney type apparatus [63 O.S. ' 1-2503].

"Stretcher aid van patient" means any person who is or will be transported in a reclining position on a stretcher or gurney, who is medically stable, non-emergent and does not require any medical monitoring equipment or assistance during transport [63 O.S. ' 1-2503].

"Substation" means a permanent structure where a(an) ambulance(s) is/are stationed and available for emergency calls on a twenty-four (24) hour basis.

"Training" means that education which is received through training programs as authorized by emergency medical services rule and regulation for training programs (Subchapter 7 of this Chapter).

"Transfer" means the movement of a patient in an ambulance.

"Trauma transfer and referral center" means an organization certified by the Department and staffed and equipped for the purpose of directing trauma patient transfers within a region that consists of a county with a population of three hundred thousand (300,000) or more and its contiguous communities, and facilitating the transfer or trauma patients into and out of the region for definitive trauma care at medical facilities that have the capacity and capability to appropriately care for the emergent medical needs of the patient.

PART 3. AMBULANCE SERVICES

310:641-3-10. License required

No person, company, governmental entity, including those established by Oklahoma Constitutional authority, or trust authority shall operate, advertise, or hold themselves out as providing ~~an air, water, or ground~~ any type of ambulance service without first obtaining a license to operate an ambulance service from the Department. The Department shall have sole discretion to approve or deny an application for ambulance service license based on the ability of the applicant to meet the requirements of this rule.

~~(1) Any ambulance service licensed prior to the effective date of these rules, July 18, 1991, shall remain in effect for the period of issuance, except that all such ambulance services shall be subject to the Act and rules which otherwise pertain hereafter, including the requirement for renewal.~~

(~~2~~1) Federal agencies are exempt from this licensing requirement unless the federal agency ambulance service routinely responds to emergency requests for service off federal property.

(~~3~~2) Persons, companies, and governmental entities which operate on their own premises, are exempt from this licensing requirement, unless an ambulance patient is transported on the public streets and highways of Oklahoma, or outside of their own premises.

(~~4~~3) An application for a license to operate an ambulance service shall be submitted on forms prescribed and provided by the Department. Ground, air, ~~water,~~ stretcher aid van and ~~specialized mobile intensive~~ specialty care services shall each be considered a separate license.

(~~5~~4) The application shall be signed under oath by the party or parties seeking to secure the license.

(~~6~~5) The party or parties who sign the application shall be considered the owner or agent (licensee), and responsible for compliance to the Act and rules.

(~~7~~6) The application shall contain, but not be limited to the following:

(A) A statement of ownership shall include the name, address, telephone number, occupation and/or other business activities of all owners or agents who shall be responsible for the service;

(B) If the owner is a partnership or corporation, a copy of incorporation documents and the name of all partner(s) or stockholder(s) with an ownership interest of five (5%) percent or more (principal), and the name and addresses of any other ambulance service in which any partner or stockholder holds an interest shall also be included;

(C) If the owner is an entity of government, governmental trust, trust authority, or non-profit corporation,

the name of each board member, or the chief administrative officer and/or chief operation officer shall be included;

(D) A business plan which includes a financial disclosure statement showing evidence of the ability to sustain the operation for at least one (1) year, and if a subscription program is anticipated the requirement of part 29, of these rules, shall be documented;

(E) Proof of vehicle and professional liability insurance, at least in the amount of one million dollars ($1,000,000.00) or to the amount provided for in "The Governmental Tort Claims Act", O.S. 51-151, O.S. 51-152, O.S. 51-153 and O.S. 51-154, shall be forwarded. This insurance requirement shall remain in effect at all times while the service is licensed, and such proof shall be in the form of a Certificate of Insurance from the insurance company;

(F) Proof of participation in a workers' compensation insurance program for employees who are subject to pertinent labor laws shall be forwarded. This insurance requirement shall remain in effect at all times while the service is licensed;

(G) Each licensee shall have medical control as prescribed by the Act and these rules;

(H) Copy of any contract(s) for vehicles, medical equipment, and/or personnel, if such exist;

(I) ~~Copy~~Paper or electronic copy of patient care protocols as required by medical control as prescribed by the Act and these rules;

(J) A documentation of support from the governmental authority(ies) having primary jurisdiction over the proposed emergency response area. If the emergency response area encompasses multiple jurisdictions, a written endorsement shall be presented from each;

(K) A description of the proposed level of service in the primary response area, including:

(i) A map defining the primary emergency response area including location(s) of base station, substations, and posts, and;

(ii) A description of the level of care to be provided, describing variations in care within the proposed service area, and;

(iii) Response time standards consistent with the requirements of OAC 310:641-3-15(a), for emergency and non-emergency requests for ambulance or stretcher aid van service within the primary response area;

(L) A written policy for receiving and dispatching emergency and non-emergency calls;

(M) Mutual aid agreements with all surrounding licensed emergency ambulance services that contain procedures for disaster response including entry into the Incident Command System and National Incident Management System.

(~~8~~7) An application for an initial, or new license, shall be accompanied by a non-refundable fee of six hundred ($600.00) dollars plus twenty ($20.00) dollars for each vehicle, in excess of two (2) vehicles utilized for patient transport. An additional fee of one hundred fifty ($150.00) dollars shall be included for each ambulance substation in addition to the base station.

(~~9~~8) If an area of Oklahoma is being served by a licensed ambulance service, or services, and the area has adopted "sole source" resolutions or ordinances or an Emergency Services District as established pursuant to Article 10, Section 9 (C) of the Oklahoma Constitution, the Department shall require the approval of the community(ies) and/or the emergency medical services authority of that service area, before an additional ambulance service shall be licensed for that same service area.

310:641-3-11. Issuance of a ground ambulance license

(a) A license may be issued for basic life support, intermediate life support, paramedic life support, ~~specialized mobile intensive care units~~ specialty care, or stretcher aid vans.

(1) Basic life support means that the ambulance service vehicles are equipped with the minimum basic equipment, and staffed with at least one EMT-Basic on each request for emergency medical services.

(2) Intermediate life support means that the ambulance service vehicles are equipped with the minimum intermediate equipment, and staffed with at least one EMT-I on each request for emergency medical services, except as specified in 310-641-3-15(a)(2).

(3) Paramedic life support means that the ambulance service vehicles are equipped with the minimum paramedic equipment, and staffed with at least one EMT-P on each request for emergency medical services, except as specified in 310-641-3-15(a)(2).

~~(4) Specialized mobile intensive care is a special category of ambulance service licensed only to transport between medical facilities. These licenses are issued on a case by case basis when the Department finds the interest of the public can best be served. Examples of specialized care include, but are not limited to, neonatal care, coronary care, burn care. Specialized mobile intensive care does not pertain to vehicles, but rather a special group of patients. Pre-hospital or scene transportation is not permitted of specialized mobile intensive care ambulance services.~~

(b) The license shall be issued only for the name, service area (area of coverage), level, and type of service given in the application.

(c) The license is not transferable or assignable.

(d) The initial license period shall expire the second June 30th, following the date of issue. Subsequent renewal periods shall be twenty four (24) months, or two (2) years.

(e) A temporary license, not to exceed one hundred twenty (120) days and for one (1) time only, may be issued by the Department. A temporary license may be issued to an applicant who substantially meets all requirements and may be granted only for an area of Oklahoma that may otherwise be without ambulance service. Sole determination for a temporary license shall be made by the Department and based upon the following:

(1) The safety, need, and well-being of the public and general populace to be served by the ambulance service;
(2) The availability of personnel in the area, and equipment of the ambulance service;
(3) The financial ability of the applicant to meet the minimum standards of emergency medical services law;
(4) The number of estimated runs to be made by the ambulance service;
(5) The desire of the community(ies) to be served.

(f) The original, or a copy of the original, license shall be posted in a conspicuous place in the principal business office. If an office, or other public place is not available, then the license shall be available to anyone requesting to see the license, during regular business hours.

(g) The Department shall have the authority to upgrade or downgrade an advanced life support ambulance provider's license upon evidence that the license no longer meets existing license requirements for that level of care. Under no circumstance shall a downgrade be for less than basic life support, and during the time of a downgrade the service shall operate on State protocols. In order to return to a level of advanced life support, the service shall provide the Department written evidence that they now meet the requirements for a higher level of care. A fee of fifty ($50.00) dollars shall be required for reinstatement.

310:641-3-13. Denial of an initial or renewal license

(a) An application may be denied for any of the following reasons:
(1) The failure to meet standards set forth by statute or rule;
(2) A felony conviction of any person, member of the firm, partnership, corporation or the person designated to supervise the service; to include, but not be limited to, fraud, grand larceny, child abuse or other sexual offense(s), drug offense(s), or a conviction which might otherwise have a bearing on the operation of the service;
(3) Insufficient number of personnel to properly staff one vehicle on a twenty four (24) hour basis at the highest level of the service license;
(4) In urban areas, an insufficient number of vehicles and/or staff to respond to life-threatening emergency calls ninety percent (90%) of the time within eight (8) minutes;
(5) Insufficient financial resources;
(6) Falsification of Department required information;
(7) Ownership, management, or administration by principals of an entity whose license has been revoked; and
(8) ~~Any other reason(s) which in the opinion of the Department, imply licensure~~Licensure or re-licensure may not be in the best interest of the public~~.~~ as determined by the Department.

(b) An applicant shall be notified in writing within sixty (60) days, from the date the Department receives the application, of the granting or denial of a license or renewal. In the event of a denial, the specific reason(s) shall be noted, and an indication of the corrective action necessary to obtain a license or renewal shall be given, if applicable. A license application may be re-submitted, but each re-submission shall be considered an initial application.

310:641-3-15. Ground ambulance service - personnel staffing

(a) Each licensed ground ambulance service shall be staffed and available to respond to any request for service within the primary service area twenty four (24) hours per day.

(~~a~~b) Each ground ambulance service~~, except for specialty care and stretcher aid vans,~~ shall have on staff an adequate number of emergency medical personnel and a sufficient number of ambulances available in order to be en route to 90% of all emergency calls within five (5) minutes of the time the call is received in dispatch at the highest level of care for which the service is licensed.
(1) The request for emergency medical services shall be considered "received in dispatch" as soon as sufficient information has been received to allow appropriate response, i.e., location of the emergency and nature of the call.
(2) Staff licensed below the level of the ambulance service may be utilized provided one or more of the following conditions have been met:
(A) The request for service has been screened by a Department approved emergency medical dispatch system, or
(B) The patient is to be transported from a higher to a lower level of care, or
(C) The transport is approved in writing by the transferring physician at a specified lower level of care and scheduled in advance.

(~~b~~c) Under no circumstance during the transport of an ambulance patient shall the attendant be less than a licensed emergency medical technician basic;

(~~c~~d) In addition to the requirement of licensed emergency medical technicians, each ground ambulance service shall have drivers who, at a minimum, are certified as a First Responder. All drivers of a ground ambulance service shall successfully complete an emergency vehicle operator course approved by the Department within 120 days of employment. Emergency vehicle operators shall successfully complete a refresher course approved by the Department every two (2) years.

(~~d~~e) In an unique and unexpected circumstance, including a disaster, the minimum driver requirement may be altered to facilitate a transport of an ambulance patient. The attendant, who is in charge of the vehicle while a patient is on board, may request a law enforcement officer or a firefighter, familiar with the operation of an authorized emergency vehicle, to drive the vehicle. If this option is utilized, a written report of the circumstances, reason, and any other pertinent information regarding the call shall be forwarded to the Division within ten (10) working days. Abuse and/or re-occurring incidents of this nature shall require a reassessment of the service's staff and staffing patterns. The service may be required to obtain additional personnel or other action by the Department may result.

(~~e~~f) Only emergency personnel authorized by this Act, except for a physician, shall be utilized by an ambulance service

for pre- hospital, or on-scene, patient care and transport. In some cases, involving inter-hospital transfer of an ambulance patient(s), a physician, physician assistant (PA), nurse practitioner, respiratory care practitioner, registered nurse or licensed practical nurse may be required to assist the emergency medical technician because the medical care required exceeds the level of the ambulance service personnel. If this option is utilized, written orders by a physician, and/or documentation of orders given via radio or telephone contact with a physician, shall become a part of the ambulance patient run report.

PART 5. GROUND TRANSPORT VEHICLES

310:641-3-20. New vehicles

(a) A used vehicle which has new ownership, or a new vehicle which is of first registration, either leased, contracted for, or purchased on or after July 18, 1991, shall conform to the General Service Administration (GSA) specifications KKK-A-1822, as amended and as in effect at the time of manufacture. These requirements shall not apply to stretcher aid vans.

(b) Copies of the GSA KKK-A-1822, and their respective dates of effect, may be obtained from the Department. These several specifications are as follows:

(1) KKK-A-1822, effective January 2, 1974;

(2) KKK-A-1822A, effective April 1, 1980;

(3) KKK-A-1822B, effective June 1, 1985;

(4) KKK-A-1822C, effective January 1, 1990;

(5) KKK-A-1822D, effective November 1, 1994;

(6) KKK-A-1822E, effective June 1, 2002; and

(7) any future GSA KKK-A-1822 specification, as may be issued.

(c) The business name, and/or a logo of the licensed ambulance service shall be placed on each side and the rear of the vehicle, and shall be at least three (3") inch high letters.

(d) The phrase "unless otherwise specified" shall mean that only the options printed within the respective KKK-A-1822 document are available for this purpose, specification, substitution, or option.

(e) Ambulance vehicles shall be exempt from the section of the KKK specifications which specifies color, emblems and markings.

(f) Specification KKK-A-1822 1.1.3 which requires the ambulance manufacture, or vendor who sells the vehicle, to furnish to the purchaser(s) a "Star of Life" certificate label, which shall be affixed in the oxygen compartment.

(g) Any vehicle initially placed in service after a purchase, lease, contract and/or remount shall be inspected, and approved and permitted under Section 310:641-3-22(e) of this Chapter, by the Department prior to utilization.

(h) Any part of a ground ambulance vehicle which is remounted by a professional remounting service shall meet the KKK-A-1822 specifications. This includes the proper placement, or replacement, of the "Star of Life" certification label in the oxygen compartment of the finished vehicle, before it can be utilized again as an ambulance in this State.

(i) A copy of the "letter of certification", as described in specification KKK-A-1822 4.3.5, shall be submitted to the Department for each ambulance vehicle make and model proposed for use in Oklahoma. Certification documentation of test verification shall be accepted only if performed by an independent testing facility, qualified to perform such tests. No vehicle shall be approved for use in Oklahoma unless certification documentation has been filed with the Department. A file of all letters of certification received by the Department shall be maintained, and a list of certified vehicles, sorted by manufacturer, shall be forwarded to the Oklahoma Motor Vehicle Commission annually by the Department.

(j) A list of approved manufacturers, salesmen and dealers who meet the provisions of the Oklahoma Motor Vehicle Commission, shall be compiled annually and be made available from the Department upon request to any interested party.

(~~j~~k) The purchaser of any ambulance vehicle which violates this section shall be responsible for corrective action, if the vehicle is accepted before receipt of the Department approval and permit.

(~~k~~l) If, while awaiting delivery of a new, remounted, or refurbished ambulance vehicle, a manufacturer or dealer provides a licensed ambulance service with an ambulance vehicle on temporary loan or lease, such temporarily loaned or leased ambulance vehicle shall comply with Federal Ambulance Specification KKK-A-1822 in effect at the time of manufacture, and shall be properly inspected and permitted by the Department prior to utilization as an ambulance in accordance with Section 310:641-3-20(f). ~~An exception to the KKK standard may be made by the Department as to the color of such temporarily loaned or leased ambulance vehicle. Such temporary permit shall be in force for a period not to exceed one hundred twenty (120) days.~~

310:641-3-22. General provisions for ground transport vehicles

(a) Authorized emergency vehicles of licensed ambulance services shall comply, at all times, with the applicable requirements of Title 47, the Oklahoma Motor Vehicle Code.

(b) Authorized emergency vehicles of licensed ambulance services shall be in good mechanical and serviceable condition at all times, so as not to be hazardous to the patient(s) or crewmembers. If, in the determination of the Department, a vehicle does not meet this requirement, it may be removed from service until repairs are made.

(c) Authorized emergency vehicles of licensed ambulance services shall be tested for interior carbon monoxide, in a manner acceptable to the Department. Carbon monoxide levels of more than ten parts per million (10ppm) shall be considered in excess, and shall render the vehicle "out of compliance". Vehicles shall be removed from service if carbon monoxide levels exceed fifty parts per million (50ppm), and until repairs are made to reduce the amounts of carbon monoxide below ten (10ppm) parts per million.

(d) Authorized emergency vehicles of licensed ambulance services utilized for the provision of patient care shall be equipped with communication equipment (radio and encoder)

which shall provide voice contact with the emergency department of the area and other hospitals outside of the area. Acceptable frequencies shall be approved and consistent with the Oklahoma Area Wide Communication Plan, as adopted under the rules of the Federal Communications Commission (FCC). No paging shall be allowed on these designated medical frequencies. Encoder numbers for Oklahoma hospitals, copies of the Area Wide Communication Plan, and approval of frequencies may be obtained by contacting the Division.

(e) Authorized emergency vehicles of licensed ambulance services shall have a permit and/or inspection decal, affixed by the Department. These decals shall be placed in the lower left corner of a rear window, unless it shall be impossible or impractical to utilize this area. The following permit classes of vehicles shall be recognized as authorized emergency vehicles of ambulance services:

(1) Class "A" permit shall be affixed to an ambulance in compliance with section 310:641-3-20 utilized as a primary "first out" vehicle. Class "A" vehicles shall have on board medical equipment as required in Section 310:641-3-23. Emergency and non-emergency ambulance patients may be transported in class "A" ambulances.

(2) Class "B" permit shall be affixed to an ambulance in compliance with section 310:641-3-20 utilized as a secondary or "back up" vehicle. Class "B" vehicles shall have medical equipment as required in section 310:641-3-23 on board when placed in-service to respond to emergency calls or transport any ambulance patients.

(3) Class "S" permit shall be affixed to a vehicle in compliance with section 310:641-3-22 utilized as a stretcher aid van. Class "S" vehicles shall have medical equipment as required in section 310:641-3-48.3 on board when placed into service to respond to calls for non-emergency transport for stretcher aid van patients.

(4) Class "E" permit shall be affixed to other vehicles owned or operated by a licensed ambulance service and utilized in provision of emergency medical services. Ambulance patients shall not be transported on the public streets or highways in a class "E" vehicle.

(5) The licensee shall notify the Department in writing on forms provided by the Department prior to placing a substitute vehicle into operation. A substitute vehicle may operate up to 5 days in temporary service provided it is available for inspection during the period.

310:641-3-23. Equipment for ground transport vehicles

(a) Each ambulance vehicle, except for stretcher aid vans, shall carry the following:

(1) In addition to the on-board suction unit, a functioning portable suction apparatus with wide-bore tubing (1/4"), rigid and soft suction catheters for adults, children and infants, which may be electronically, manual or oxygen powered;

(2) A minimum of two (2) each, single use adult, pediatric and infant bag-valve mask resuscitators with an adult, child, and infant clear masks;

(3) Oropharyngeal airways, set or a minimum of one (1) of each size for adult (size 7,8,or 9), child (size 3,4,5,or 6), and infant (sizes 0,1,or 2), -- nasal pharyngeal airways are optional;

(4) Portable and wall mounted oxygen sets, with variable flow regulators and adequate length tubing, and an extra bottle of portable oxygen;

(5) A minimum of two (2) each adult, child, and infant size oxygen masks, and a minimum of two (2) adult nasal cannulas;

(6) Bandaging materials, as follows:

(A) Two (2) burn sheets, clean, wrapped, and marked in plastic bag does which not need to be sterile;

(B) Fifty (50) sterile 4"x4" dressings;

(C) Six (6) sterile 6"x8" or 8"x10" dressings;

(D) Ten (10) roller bandages, 2" or larger, such as kerlix, kling, or equivalent;

(E) Four (4) rolls of tape (1/2" and larger);

(F) Four (4) sterile occlusive dressings, 3" x 8" or larger;

(G) Eight (8) triangular bandages, and;

(H) One (1) pair of bandage scissors must be on the ambulance or must be a required personal carry item for the EMS crew.

(7) Fracture immobilization devices, as follows:

(A) One (1) traction splint for lower extremity, with limb support slings, padded ankle hitch, padded pelvic support, traction strap;

(B) Upper and lower extremity splints for joint above and below fracture (such as pneumatic, wire ladder, wood, cardboard);

(C) Short spine board or vest type immobilizer, including straps and accessories;

(D) Two (2) long spine board including straps and head immobilization device;

(E) Two (2) rigid or adjustable extrication collars in large, medium, small adult sizes, and pediatric sizes for children ages 2 years or older and one (1) infant collar. Collars shall not be foam or fiber filled.

(8) Miscellaneous medical equipment, as follows:

(A) Portable blood pressure set in adult, child, and infant sizes;

(B) Stethoscope;

(C) Obstetrical kit, with towels, 4"x4" dressing, umbilical tape, bulb syringe, cord cutting device, clamps, sterile gloves, aluminum foil, and blanket;

(D) Universal communicable disease precaution equipment including gloves, mask, goggles, gown, and other universal precautions;

(E) Blood-glucose measurement equipment per ~~local~~ medical direction and Department approval;

(F) Semi-automatic advisory defibrillator (SAAD)

(9) Other mandatory equipment, as follows:

(A) Trash receptacle which shall include a sufficient number of replacement bags and a receptacle for containment of medical wastes that displays the "biological hazard" emblem.

(B) Two way radio communication equipment on VHF; with a minimum of 155.340 MHz for hospital communications.

(C) One (1) sturdy, lightweight, all-level cot for the primary patient;

(D) A crash stable side or center mounting cot fastener and/or anchorage assembly of the quick release type;

(E) At least three (3) strap type restraining devices (chest, hip, and knee), and compliant shoulder harness shall be provided per stretcher, cot, and litter (not less than two (2") inches wide, nylon, easily removable for cleaning, two (2) piece assembly with quick release buckles)

(F) Patient run reports;

(G) Two (2) fire extinguishers, mounted with quick release in cab and patient compartment (each dry powder, ABC, five (5#) pound);

(H) Two (2) operable flashlights;

(I) All ambulance equipment and supplies shall be maintained in accordance with OAC 310:641-3-60. Additionally, sterility shall be maintained on all sterile packaged items.

(J) Digital or strip type thermometers and single use probes.

(K) Six (6) instant cold packs.

(b) Intermediate equipment, in addition to the basic equipment-the ALS ambulance shall carry the following:

(1) Intravenous administration equipment in a sufficient quantity to treat multiple patients requiring this level of care;

(2) Intraosseous administration equipment if approved by local medical control;

(3) Appropriate quantities of sterile fluid as approved by local medical control;

(4) Adequate advanced airway equipment ~~as~~ per ~~local~~ medical control;

(5) Blood sampling equipment if approved by ~~local~~ medical control;

(6) One (1) Occupational Safety and Health Administration (OSHA) approved sharps container;

(7) Pulse oximetry device if approved by ~~local~~ medical control; and

(8) End tidal CO2 monitoring device.

(c) Paramedic equipment, in addition to the required basic and intermediate equipment, the ALS ambulance will carry the following:

(1) Cardiac monitor/defibrillator with printout, defibrillator pads, quick-look paddles, EKG leads, chest attachment pads. Telemetry capability is optional. Monitor must be re-calibrated every twelve months and;

(2) Drugs (pre-load when available) approved by medical control, including those which are compatible with the recommendations of the American Heart Association's Emergency Cardiac Care Committee, as reflected in the Advanced Cardiac Life Support and Pediatric Advanced Life Support guidelines. Expired medications shall be immediately removed.

(d) Extrication equipment shall be available for each ambulance service by either mutual aid assistance with a fire department, other ambulance service, rescue squad, or carried in total on the service's vehicle.

(1) All ambulance vehicles shall carry the following equipment:

(A) Three (3) reflectors (triangular) or battery powered warning lights;

(B) Two (2) OSHA approved hard hats, with goggles or face shield; and

(C) Gauntlet leather gloves, two (2) pair of heavy work gloves; and

(D) One (1) spring-loaded window punch.

(2) All ambulance services shall have available either on board the ambulance or through mutual aid agreement with a fire department rescue unit, the following extrication equipment:

(A) One (1) hammer (3# to 5# with 15" handle);

(B) One (1) fire ax, flat head

(C) One (1) crowbar, (51" pinch point)

(D) One (1) bolt cutter (minimum 18")

(E) One (1) power jack, portable, hydraulic or pneumatic, and one (1) spreader tool kit, hand powered, at least of four (4) ton capacity and one (1) air gun kit, air cutting tools, (250psi with cylinder and chisels); "Jaws of Life" may be substituted

(F) One (1) shovel, pointed blade

(G) One (1) tin snip, double action (at least 8")

(H) Two (2) ropes, synthetic, kernmantle (50' x 3/4")

(I) Protective goggles, one (1) per occupant

(J) Two (2) utility knives, curved blade

(K) Two (2) lights, portable, battery operated;

(L) One (1) blanket (large 5'x 6' for patient protection during extrication)

(M) Two (2) baling hooks;

(N) One (1) spring loaded window punch;

(O) Twelve (12) blocks, hardwood shoring, (2"x4"x12" blocks with rope handles);

(P) Four (4) blocks, hardwood cribbing, (4"x4"x12" blocks with rope handles);

(Q) Four (4) blocks, hardwood cribbing, (wedge shaped with rope handles);

(R) One (1) come-along (2 ton, chain type and two (2) pull chains, alloy steel, rescue type (10' at least with grab hooks and rings);

(S) Two (2) extrication straps, synthetic fabric, (9' with quick release buckles)

(T) One (1) loop sling, extrication, (1" wide nylon or equal x 6' circumference with closure ring)

(e) **Optional equipment:**

(1) Portable battery powered ventilator per local medical direction.

(2) Pneumatic anti shock garment (PASG), compartmentalized (legs and abdomen separate), control valves (closed/open), inflation pump per local medical direction.

PART 7. AIR AMBULANCES

310:641-3-30. Air ambulance license

(a) The air ambulance operator (applicant) shall meet the requirements of section 310:641-3-10 and be licensed at a Paramedic level and/or Specialty Care license in compliance with section 310:641-3-40. The air ambulance license shall be in addition to and separate from a specialty care license. In addition the following special requirements shall be forwarded for application, survey and renewal purposes, as requested on forms provided by the Department.

(1) A list of flight crew and qualifications.

(2) The air medial director and qualifications.

(3) Copy of the Federal Aviation Administration (FAA) Part 135 certificate.

(4) Copy of contracts for aircraft, medical equipment, personnel and explanations, if applicable.

(b) The issuance of an air ambulance license shall be consistent with 310:641-3-10, except for 310:641-3-10(a)(6)(J).

(~~b~~c) The issuance of an air ambulance license shall be consistent with section 310:641-3-11.

(~~c~~d) The renewal of an air ambulance license shall be consistent with section 310:641-3-12.

(e) Temporary aircraft shall be inspected consistent with 310:641-3-22(e)(5).

(~~d~~f) The denial of an air ambulance license, or the renewal thereof shall be consistent with section 310:641-3-13, except that an air ambulance licensee shall not be held to the response criteria in Section 310:641-3-13(a)(3).

(~~e~~g) Air ambulance licensees shall be subject to section 310:641-3-14.

(~~f~~h) Air ambulance licensees shall provide an on-going and active aviation safety program.

(i) An air ambulance provider holding a valid license in an adjoining state and operating and responding only from bases in that state may be reciprocally licensed in Oklahoma.

310:641-3-34. Air ambulance medical staffing

(a) Each air ambulance flight originating in Oklahoma shall have, as a minimum, one of the following aeromedical crew member (ACM) attending the patient:

(1) (ACM-4) Physician licensed to practice in the State of Oklahoma. This crew member should be oriented educationally in Advanced Cardiac Life Support (ACLS),Pediatric Advanced Life Support (PALS), Advanced Trauma Life Support (ATLS), altitude physiology, and on-board treatment modalities.

(2) (ACM-3) Registered nurse licensed to practice in the State of Oklahoma. This crew member should ~~be licensed as an EMT Paramedic Registered Nurse~~ be oriented educationally in critical care modalities (obstetrics, neonatology, pediatrics, burns, cardiology, neurosurgery, toxicology and infectious disease specialties), altitude physiology, aircraft safety, crash and survival procedures, mapping/aircraft orientation, aviation communications.

(3) (ACM-2) EMT Paramedic licensed to practice in the State of Oklahoma. This crew member should be oriented educationally in altitude physiology, aircraft safety, crash and survival procedures, mapping/aircraft orientation, aviation communications, ACLS, PALS and Pre-hospital Trauma Life Support (PHTLS).

(b) Aeromedical crew members (ACMs) are required to participate in continuing education training for, but not limited to, the following: altitude physiology, emergency medical services and aviation communications, aircraft and flight safety, use of patient care equipment, protocol and procedure review and legal aspects of air transportation.

(1) Didactic continuing education shall include an annual review of:

(A) Aviation B safety issues.

(B) Hazardous materials recognition and response.

(C) Human factors B Crew Resource Management

(D) Infection control

(E) State EMS rules and regulations regarding ground and air transport.

(F) Stress recognition and management.

(G) Survival training.

(2) Appropriate continuing education shall be developed and documented on an annual basis and must include:

(A) Critical care (adult, pediatric, neonatal).

(B) Emergency / trauma care.

(C) Invasive procedure labs.

(D) Labor and delivery.

(E) Prehospital experience.

(c) Scene or pre-hospital transports of air ambulance service shall have as a minimum, one aeromedical crew member licensed as an emergency medical technician B Paramedic.

PART 9. SPECIALTY CARE

310:641-3-40. Specialty care

(a) ~~Specialized mobile intensive~~Specialty care ambulance service may be licensed for the sole purpose of providing ~~inter-hospital~~ inter-facility transport of special populations of patients such as those requiring specialized medical monitoring and advanced life support ~~for the type of patients as named~~ as described in the application.

(b) Any ~~specialized mobile intensive~~ specialty care ambulance service licensed prior to the effective date of this Chapter shall remain in effect for the period of issuance, except that all such ambulance services shall be subject to the Act and rules which otherwise pertain, including the requirement for renewal.

310:641-3-41. Application

(a) In addition to the application for initial ambulance service license, the applicant for ~~specialized mobile intensive~~ specialty care shall be required to submit such additional information to support the following:

(1) Critical care category - such as coronary, neonate, burn, spinal, and such other categories as the Department finds to be in the public interest.

(2) Staffing patterns - staff may be physicians, registered nurses, emergency medical technician paramedic,

and other health care professionals all with specialty care training in the critical care category.

(3) A specialty care ambulance service based in another state may have as its medical director a physician who is not licensed to practice in the State of Oklahoma but is fully licensed in good standing in the home state of the specialty care ambulance service. The specialty care ambulance service medical director shall meet all other qualifications listed in OAC 310:641-3-35(a).

(~~3~~4) A listing of equipment and supplies for the specialty category for which a license may be issued.

(~~4~~5) Training and education which is provided to the staff for the specialty care category. Copies of curriculum and training hours should be attached for review.

(~~5~~6) Any other information which the Department may find essential or necessary to complete the review of the specialty care application for license.

(b) ~~The application~~Applications for~~ specialized mobile intensive~~ specialty care licensure shall be reviewed by the Medical Direction Subcommittee of the Oklahoma Emergency Response Systems Development Advisory Council, for recommendation to the Department.

(c) Specialty care licenses shall be exempt from the requirements of 310:641-3-10(6)(j).

310:641-3-44. Vehicles

~~Upon the effective date of this Chapter all specialized mobile intensive~~Specialty care ground vehicles~~ purchased thereafter, July 18, 1991,~~ shall conform to~~ GSA KKK-A-1822~~ 310:641-3-20, except for specifications of medical and extrication equipment~~, and the staff~~ required for~~ general purpose~~ ground ambulance vehicles. If a ~~specialized mobile intensive~~specialty care service has the need to utilize a vehicle for ground ambulance other than the~~ KKK-A-1822~~ 310:641-3-20 compliant vehicle, a written waiver may be granted upon request with the application. A determination for this exception shall be made by the Department.

PART 10. STRETCHER AID VANS

310:641-3-48.4. Stretcher aid van staffing

(a) Each stretcher aid van vehicle used for non-emergency transfer of a stretcher aid van patient shall be staffed by a minimum of two (2) individuals~~ during transport of a stretcher aid van patient~~. One individual shall be a licensed emergency medical technician at the basic level or above who has completed an emergency vehicle operator course approved by the Department. The second individual shall hold a valid Oklahoma driver license and have minimum training consisting of successful completion of both an eight (8) hour training class in cardiopulmonary resuscitation and an eight (8) hour defensive driver training course.

(b) Under no circumstance during the transport of a stretcher aid van patient shall the attendant be less than a licensed emergency medical technician basic;

(c) Each stretcher aid van service shall provide each attendant and driver an orientation designed to familiarize these individuals with the local and regional emergency medical system and other Oklahoma public safety resources.

(d) Documentation of the orientation and any required training and licensure for each attendant and driver shall be maintained in the employee's personnel file.

PART 19. INSPECTION, CORRECTION, ACTIONS

310:641-3-90. Inspections

(a) The Department shall conduct unannounced inspections of every licensed ambulance service. Inspection~~ shall~~ may include a review of ~~all~~ any requirements of the Act and rules promulgated thereunder. The Department may require copies of such records~~,~~ as deemed necessary consistent with the requirements of OAC 310:641-3-160(a).

(b) The Department may request emergency medical personnel to present a license or certificate card~~,~~ at any time while on duty.

PART 21. WATER AMBULANCES [REVOKED]

310:641-3-100. Water ambulances [REVOKED]

~~Water ambulances shall be licensed. Every water ambulance shall have at least one (1) emergency medical technician on board and life-saving equipment appropriate to the patient(s) needs. Appropriate equipment shall be determined by the Department.~~

PART 23. EMERGENCY MEDICAL SERVICES REGIONS

310:641-3-110. Emergency medical services regions

(a) Region(s), established pursuant to Section 1-2503(16) of the Act shall not be recognized, without Department approval for this purpose. Pursuant to Title 74, O.S., Section 1001, et seq., the "Interlocal Cooperation Act", Section 1006 of this Title, the Department shall exercise authority granted to approve or disapprove all matters within its jurisdiction, in addition to and in substitution for the requirement of submission to and approval by the Attorney General.

(b) The Department shall recognize regions, which comply with the law and this Chapter.

(c) Any regional emergency medical services system shall provide the name of the regional medical director, copies of regional standards, rules and regulations, and transport protocols established for the regional emergency medical services system to the Department.

PART 31. CERTIFIED FIRST RESPONSE AGENCIES

310:641-3-150. Certified ~~First~~ first response agencies

(a) All organizations desiring to become certified by the Department as a first response agency shall first secure a written agreement with a sponsoring licensed ambulance service, and an endorsement from the governmental authority in which the agency is located. The ambulance service shall submit an application for the proposed first response agency, and provide such documentation and other requirements to the Department, as prescribed on forms provided by the Department.

(1) Transportation of ambulance patients shall not be performed by certified first response agencies.

(2) An organization shall not be qualified, nor designate itself, as a Certified First Response Agency unless certified by the Department.

(b) The first response agency application for certification shall contain at least the following:

(1) The name, address, and officers of the organization;

(2) The name of the physician medical director of the organization;

(3) The name or names of licensed ambulance services, which shall serve as transport units for the service area;

(4) The names of all certified and licensed personnel acting or working in the organization, for this purpose;

(5) The level of care to be rendered; and

(6) A list of equipment and supplies.

(c) Applications may be approved by the Department, based upon inspection and review of the purpose and capability of the applicant, and upon a written agreement with a licensed ambulance service which shall provide transportation.

(1) The application shall be accompanied by a non-refundable fee of fifty ($50.00) dollars.

(2) Upon submission of a complete application, the Department shall have sixty (60) days to determine the ability of the agency to meet the requirements of law and these rules.

(3) A certificate shall be valid for two (2) years, The Department shall mail all certified first response agencies a "Survey/Renewal Form" in October, each year. This form shall be considered and utilized as a renewal application, if due. This form along with supplemental forms shall be returned to the Department by December 1st each year. The renewal fee shall be twenty ($20.00) dollars.

(d) Personnel of a certified first response agency may utilize procedures authorized to the extent and limitations set forth by required medical control of the first response agency and within their license and certification level.

(e) The Department may place on probation, suspend, revoke, and/or fine certified first response agencies, under the same laws governing ambulance services.

(f) Inspections shall be made at the discretion of the Department.

PART 33. SERVICE AND AGENCY FILES

310:641-3-160. Ambulance service, first response agency and stretcher aid van files

(a) Each licensed ambulance service and first response agency shall maintain files about the operation, maintenance, and such other required documents, at the business office. These files shall be available for review by the Department, during normal work hours. Files which shall be maintained include the following:

(1) Ambulance services and stretcher aid van services shall maintain copies of all run reports for three (3) years, including copies of run sheets and narrative and;

(A) A copy of the run report shall be left with the receiving hospital at the time a patient(s) is (are) accepted at the hospital;

(B) All run reports shall contain administrative, legal, medical, community health and evaluation information required by the Department;

(C) All run reports and their narrative(s) shall be considered confidential;

(2) All licensed and certified providers shall maintain records on the maintenance, and ~~daily~~ regular inspections of each vehicle. Each vehicle must be inspected and a checklist completed after each call, or on a daily basis, whichever is less frequent;

(3) All licensed and certified providers shall maintain copies of licenses, certificates or other qualifications of staffing or personnel employed by or associated with the service or agency as required by this Act. These required documents shall be separate from other personnel records so as to ensure confidentiality of records which do not pertain to the requirements for the license or certificate;

(4) Copies of staffing patterns, schedules, or staffing reports which indicate the ambulance service is maintaining twenty four (24) hour coverage, at the highest level of license;

(5) Copies of in-service training and continuing education records;

(6) Copies of ambulance service operational and medical protocols;

(7) A log of each call received and/or initiated, to include the number of the run report, date, all required times, name of the patient, location of the scene, and nature of the call;

(8) Copies of all Occupational, Safety, and Health Agency requirements, as required; and

(9) Such other documents which may be determined necessary by the Department.

(b) The standardized data set and an electronic submission standard for EMS data as developed by the Department shall be mandatory for each licensed ambulance service. Reports of the EMS data standard shall be forwarded to the Department by the fifteenth (15th) day following the end of each month. Exceptions to the monthly reporting requirements shall be granted only by the Director of EMS, in writing.

(c) Review and the disclosure of information contained in the ambulance service files shall be confidential, except for information which pertains to the requirements for license, certificate, or investigation issued by the Department.

(d) Department representatives shall have prompt access to files, records and property as necessary to appropriately survey the provider. Refusal to allow access by representatives of Department to records, equipment or property may result in summary suspension of licensure by the Commissioner of Health.
(e) All information submitted and/or maintained in files for review shall be accurate and consistent with Department requirements.

PART 35. SOLE SOURCE

310:641-3-170. Sole source ordinances
(a) An ambulance service which operates as a sole source provider established by ~~city ordinance~~ EMS regions, ambulance service districts or municipalities shall file with the Department a copy of the ~~city~~ ordinance or regulation and a copy of the contract to operate as a sole source provider. This requirement shall be retroactive and includes all established sole source ambulance services.
(b) An ambulance service which operates as a sole source provider for a "region" as established pursuant to the Oklahoma Interlocal Cooperation Act [Title 74, Section 1001, et seq.], shall file, with the Department, a copy of the interlocal agreement and any ordinance or other regulations or contract or agreement established by the region for ambulance service provision.
(c) Violation of contracts established herein may be cause for enforcement action by the Department.

PART 37. REGIONAL SYSTEM [REVOKED]

310:641-3-180. Regional emergency medical services system [REVOKED]
~~Any regional emergency medical services system shall provide the name of the regional medical director, copies of regional standards, rules and regulations, and transport protocols established for the regional emergency medical services system to the Department.~~

SUBCHAPTER 5. PERSONNEL LICENSES AND CERTIFICATION

PART 1. GENERAL PROVISIONS

310:641-5-1. Purpose
These rules of this Subchapter are promulgated to:
(1) Establish minimum standards for the issuance and renewal of certification and/or licensing of emergency medical care personnel;
(2) Provide the standards for the enforcement of the provision of the ~~"Oklahoma Emergency Medical Services Act"~~ "Emergency Response Systems Development Act" and these ~~Rules and Regulations~~ rules.

PART 3. EMERGENCY MEDICAL PERSONNEL LICENSES

310:641-5-11. License qualification
Persons applying for initial license shall meet the requirements for qualification, application, and procedure as follows:
(1) Applicant shall be at least eighteen (18) years of age.
(2) Applicant shall within the past two (2) year period previous to examination, have successfully completed a Department approved emergency medical technician course. The two (2) year period is based upon the date of successful course completion.
(3) Applicant shall submit the following:
(A) State application that specifies true, correct and complete information as to eligibility and character.
(B) A National Registry application that has been completed on-line with the National Registry of EMTs. Grading fee shall be paid to the National Registry.
(4) An application fee of seventy-five dollars ($75.00) ~~dollars~~ for EMT-B and one hundred fifty dollars ($150.00) ~~dollars~~ for EMT-I and EMT-P shall be submitted with the application. A ten dollar ($10.00) fee shall be submitted for a basic written re-test. EMT-I and EMT-P re-application fees shall be one hundred ~~fifty ($150.00)~~ ten dollars ($110.00) for both written and practical ~~re-examination~~, one hundred dollars ($100.00) for a full practical ~~re-examination~~, fifty dollars ($50.00) for a partial practical ~~re-examination, and fifty ($50.00)~~ and ten dollars ($10.00) for a written only ~~re-examination~~. Fees shall be in an acceptable form, made payable to the Oklahoma State Department of Health - Emergency Medical Services Division (OSDH/EMS). Fees are non-refundable except if the application is rejected. Candidates who fail to appear at the scheduled test will be charged the full fee when a new application is made.
(5) If national registration is obtained outside the State of Oklahoma the candidate must follow reciprocity requirements to obtain State licensure
(6) A license application may be denied on the basis of a felony which includes any conviction of assault, battery, or assault and battery with a dangerous weapon; aggravated assault and battery; murder or attempted murder; manslaughter, except involuntary manslaughter; rape, incest, or sodomy; indecent exposure and indecent exhibition; pandering; child abuse; abuse, neglect or financial exploitation of any person entrusted to his care or possession; burglary in the first or second degree; robbery in the first or second degree; robbery or attempted robbery with a dangerous weapon, or imitation firearm; arson, substance abuse, and such other convictions or circumstances which in the opinion of the Department would render the applicant unfit to provide emergency medical care to the public. Each decision shall be determined on a case-by-case basis.
(7) An applicant may request a review of adverse decisions, made within this section, by applying in writing within thirty (30) calendar days after the notice of

rejection. Review, by the Department, shall be held in accordance with the Administrative Procedures Act.

(8) Candidates are required to successfully complete all sections of the National Registry of Emergency Medical Technicians practical and written examinations.

(A) Practical examinations shall adhere to the policies of the National Registry and the Department. Candidates shall demonstrate an acceptable level of competency in all respective skill areas. The Department reserves the right to review and require additional practical examination of any candidate.

(i) A candidate for EMT-B shall complete a practical examination before applying for a written examination. The practical examination may be conducted at an approved training program in accordance with National Registry policies and shall be separate from the completion of training. Verification of successful completion and the measured competency of each of the required skill areas shall be kept on file, for a period of three (3) years at the training program, and summaries submitted to the Department with the final course documentation.

(ii) A candidate for EMT-I shall apply for both the practical and written license examinations. The written and practical examinations shall be administered in accordance with policies currently established by the National Registry of Emergency Medical Technicians.

(iii) A candidate for EMT-P shall apply for both the practical and written license examinations. The written and practical examinations shall be administered in accordance with policies currently established by the National Registry of Emergency Medical Technicians.

(B) Candidates are allowed three full attempts to pass the practical examination (one "full attempt" is defined as completing all six (6) stations and two retests if so entitled). Candidates who fail a full attempt or any portion of a second retest must submit official documentation of remedial training over all skills before starting the next full attempt of the practical examination and re-examining over all six (6) stations. This official documentation must be signed by the EMT-Paramedic Training Program Director or medical director of training/operations which verifies remedial training over all skills has occurred since the last unsuccessful attempt and the candidate has demonstrated competence in all skills. Should a candidate fail the third full and final attempt of the practical examination, the candidate must complete a new, entire, state-approved EMT-Paramedic Training Program.

(C) Successful completion of the practical examination is valid for one (1) year only.

(9) The written examination is based on the respective national standard emergency medical technician curriculum, as developed and promulgated by the United States Department of Transportation including State approved changes. Each candidate shall realize an overall passing minimum score, and in the case of EMT-P a passing minimum score for each section. Candidates who fail the written examination may re-apply, if eligible, for subsequent examination by submitting another application and fee, and meet current entry requirements.

(A) Candidates are allowed three (3) opportunities to successfully complete the written examination, within the two (2) year limitation on training and within the one (1) year limitation of the practical examination.

(B) Candidates who opt to attempt a fourth written examination shall submit proof of successful completion of a Department approved emergency medical technician refresher course, at the respective level of training.

(C) No oral examination of the written test shall be permitted. Only special examination accommodations approved by the National Registry will be provided for examinations.

(10) The Department shall administer all National Registry written examinations and EMT-I and EMT-P practical examinations. Training programs, shall administer national registry basic and first responder practical examinations. Licensed ambulance services and certified first response agencies approved by the Department shall administer National Registry first responder practical examinations. All practical examinations are administered after completion of a State approved training course at all levels.

(11) Department approved evaluators shall be used for all EMT-I and EMT-P practical examinations.

310:641-5-17. Lapsed licenses

To reinstate an emergency medical technician license which has expired, lapsed, or which has not been renewed, an individual shall accomplish one of the following:

(1) If the expiration date is within a two (2) year period, the person shall successfully complete a Department approved USDOT / NHTSA national standard emergency medical technician refresher course, submit an initial application, appropriate fee, and successfully complete the Department approved written and practical examinations, respective to the level of training and original license, or;

(2) If the expiration date is beyond a two (2) year period, the person shall successfully complete a Department approved USDOT / NHTSA national standard emergency medical technician training course, submit an initial application, appropriate fee, and successfully complete the Department approved written and practical examinations, respective to the level of training and original license.

(3) Emergency medical technician B paramedic if previously certified by the national registry may apply for re-entry. Re-entry will be conducted by, and consistent with the standards of, the National Registry of Emergency Medical Technicians.

PART 5. PROCEDURES AUTHORIZED

310:641-5-30. Standard of care

(a) A licensed emergency medical technician basic (EMT-B) may perform to the following level or standard of care;

(1) Patient assessment, including the determination of vital signs, diagnostic signs, and triage;

(2) Bandaging, splinting, and the control of hemorrhage;

(3) Treatment of shock, including the use of pneumatic anti-shock trousers (PASG);

(4) Cardiopulmonary resuscitation (CPR) and the use of only adjunctive airway devices and the use of a semi-automated external defibrillator (SAED);

(5) The maintenance of intravenous fluids, without medications and/or drugs added;

(6) Rescue and extrication procedures;

(7) Assistance of patient prescribed medications, including sublingual nitroglycerin, epinephrine auto injector and hand held aerosol inhalers;

(8) Administration of oral glucose, activated charcoal, aspirin, agency supplied epinephrine auto injector, and albuterol or approved substitute ~~as~~ per ~~local~~ medical direction;

(9) All other emergency medical care skills and measures included in the standard United States Department of Transportation basic emergency medical technician training curriculum which are not specifically listed above, and;

(10) Upon the approval of the Department, and recommendation of the Council, additional skills may be authorized upon the written request of a local medical director. Authorized skills for the EMT-B may be reduced or limited by ~~local~~ medical direction.

(b) A licensed emergency medical technician intermediate (EMT-I) may perform to the following level or standard of care;

(1) All skills listed in Subsection 310:641-5-30(a) for the EMT-B;

(2) Establishment of vascular access for the administration of intravenous fluids, without medications and/or drugs added;

(3) Administration of medications per ~~local~~ medical direction and approved by the Department;

(4) Venipuncture to obtain blood samples;

(5) The use and placement of definitive airway adjuncts for adults, children and infants;

(6) Upon the approval of the Department, and recommendation of the Council, additional skills may be authorized upon the written request of a local medical director.

(c) A licensed emergency medical technician paramedic (EMT-P) may perform to the following level or standard of care;

(1) All skills listed in Subsection 310:641-5-30(a), for the EMT-B and Subsection 310:641-5-30(b), for the EMT-I;

(2) The recognition, interpretation, treatment of cardiac arrhythmias using a cardiac monitor/defibrillator/external pacemaker;

(3) The advanced management of pediatric emergencies, including resuscitation, advanced airway placement, and administration of pediatric medication;

(4) The advanced management of obstetric and gynecologic emergencies, including medication administration;

(5) Advanced intervention of psychiatric patients, including medication administration;

(6) All other emergency medical care skills and measures included in the standard United States Department of Transportation paramedic emergency medical technician training curriculum, which are not specifically listed above, and;

(7) Upon the approval of the Department, and recommendation of the Council, additional skills may be authorized upon the written request of a ~~local~~ medical director.

PART 11. EMERGENCY MEDICAL PERSONNEL CERTIFICATION

310:641-5-61. First responder

(a) No person may present himself or perform as a first responder in Oklahoma without ~~validation~~ certification from the Department or ~~certification from~~ the National Registry ~~of Emergency Medical Technicians~~. ~~Validation or certification~~Certification will be for a two (2) year period.

(b) Persons applying for initial certification shall meet the following requirements to be eligible for first responder;

(1) Each applicant shall have successfully completed a Department approved First Responder course;

(2) Each applicant shall have, after completion of training, successfully completed a written and practical examination administered at the approved training facility, and based upon the First Responder curriculum objectives. Documentation of this requirement shall be submitted in writing on the final course roster, to the Department; and

(3) As of January 1, 2000 all new applicants shall successfully become and maintain National Registry First Responder Registration.

(A) First Responders certified by the Department before January 1,2000 shall be given the opportunity to become National Registered.

(B) First Responders certified by the Department, whose initial training is greater than two (2) years prior to January 1, 2000, shall be given the opportunity to become Nationally Registered. Candidates shall meet National Registry requirements for registration.

~~(C) First Responders certified by the Department prior to January 1, 2000, shall continue to be eligible for state certification renewal. First Responder renewal requirements include: successful completion of a Department approved first responder refresher~~

~~course every two (2) years, and continued activity with an ambulance service, certified first response agency or other organization providing first responder care.~~

(~~D~~C) Once an individual obtains National Registration as a First Responder, they shall maintain National Registration in order to remain certified in Oklahoma.

(4) The Department shall issue by September 30, 2008 a new certification for a two-year period beginning October 1, 2008 through September 30, 2010 to all qualified First Responders who were initially certified prior to January 1, 2000.

(A) First Responders who were initially certified prior to January 1, 2000 shall provide the following to the Department:

(i) Current BLS CPR card

(ii) Documentation of successful completion of National Standard USDOT First Responder Refresher courses every two years since January 1, 2002.

(B) Subsequent certification shall be for a two year period beginning October 1 through September 30.

(C) Renewal forms shall be mailed by the Department in June of the re-certification year. The Department may renew a certification when the following documentation has been received:

(i) A completed first responder certification renewal application.

(ii) A completion certificate or a final roster showing satisfactory completion of a First Responder Refresher.

(iii) A current copy of a provider-level CPR card from the AHA, Red Cross, National Safety Council or other Department approved training program.

(iv) A completed felony statement. If a candidate or applicant had been convicted of a felony, documentation of the conviction, its deposition, and outcome will be sent to the Department for a case-by-case review. The Department may at its discretion deny certification to anyone convicted of a felony.

(c) Certified first responders may perform to the following level or standard of care:

(1) Patient assessment and triage;

(2) Basic wound management, including hemorrhage control;

(3) Bandaging and splinting of fractures;

(4) Basic life support (BLS) including use of the semi-automated external defibrillator (SAED);

(5) Such other skills contained within the Department of Transportation national standard first responder curriculum, and;

(6) Upon the approval of the Department, and recommendation of the Council, additional skills may be authorized upon the written request of a ~~local~~ medical director~~, if such skills do not exceed the scope of practice for certification~~.

(d) A certified first responder, while performing in the employment or association of an ambulance service or certified first response agency, or agency providing first responder care to the general public shall perform medical procedures under medical control.

(e) No other State organization, school, chapter, or association may certify First Responders.

PART 13. RECIPROCITY

310:641-5-70. Reciprocity

(a) All candidates for reciprocity privileges shall submit an application for this purpose. Applications may be obtained from the Department. Fees shall be: Basic $100.00, Intermediate $200.00, Paramedic $200.00. Fees shall be in an acceptable form, made payable to the Oklahoma State Department of Health/Emergency Medical Services Division (OSDH/EMS). All fees are non-refundable.

(b) Emergency medical technician applicants for reciprocity licensing shall document National Registration in good standing.

(1) The Department may issue a license, based upon satisfactory verification by the Department, to a Nationally Registered emergency medical technician basic or emergency medical technician paramedic.

(2) The Department may issue a license to a Nationally Registered emergency medical technician intermediate, based upon satisfactory verification by the Department of completion of training and successfully passing a National Registry Practical examination on endotracheal intubation. The Department may issue an emergency medical technician basic license if the applicant meets all requirements except endotracheal intubation. The applicant may re-apply to be up-graded to the Intermediate level after all requirements have been met. Fees commensurate for re-examination as found in 310:641-5-11(4) shall be submitted with the application to up-grade to the Intermediate level. This up-grade may only occur during the initial license period.

(c) The Department may waive reciprocity fees for persons serving in the U.S. Military and deployed to a country in conflict or in support of such deployment.

(~~c~~d) A decision to grant reciprocity to each applicant, as to qualification for Oklahoma license, shall be determined by the Department.

SUBCHAPTER 7. TRAINING PROGRAMS

PART 3. TRAINING PROGRAMS

310:641-7-11. Training program applications

(a) The application for approval to conduct emergency medical services training shall be made on forms provided by the Department and shall include but is not be limited to the following:

(1) Name of the training program, address, telephone number and fax number;
(2) Level of program to be conducted;
(3) The name of the Program Administrator and a Curriculum Vitae which includes address, telephone number, fax number and an electronic-mail address;
(4) The name of the Program Coordinator and Curriculum Vitae or Resume that includes address, telephone number, fax number and an electronic mail address;
(5) The name of the Medical Director and a Curriculum Vitae or Resume which includes address, telephone number, fax number and an electronic-mail address, copy of Oklahoma State medical license and Oklahoma Bureau of Narcotics and Dangerous Drugs expiration date;
(6) Notarized affidavit attesting that the program will be conducted according to the Act and rules;
(7) Copies of student grievance/appeal policy;
(8) List of all instructors and individual vitae for each with copies of required documentation of instructor qualifications;
(9) Copies of all current agreements for the use of equipment and facilities needed to conduct courses;
(10) Copies of all current agreements for clinical experience locations required to conduct courses;
(11) Current copies of inventories of equipment and supplies;
(12) Copies of course plans (syllabi) and curriculum objectives for the course; and
(13) Site applications for additional sites of instruction with required attachments.

(b) Department personnel may make site visits, inspections or observations, to determine the training program's ability to conduct emergency medical services training in accordance with the Act and rules.

(c) The program administrator, program coordinator or at least one paramedic level instructor shall be an Advanced Cardiac Life Support (ACLS) instructor for a Paramedic training program.

(d) The program administrator or program coordinator for a Paramedic training program shall be an Oklahoma licensed paramedic.

310:641-7-13. Training program responsibilities

(a) Each training program sponsoring emergency medical services training shall be responsible for course completion, respond to student complaints, and resolve student grievances.

(b) Each training program conducting emergency medical services training shall use the United States Department of Transportation, National Highway Traffic Safety Administration (USDOT, NHTSA) curricula and curricula supplements as adopted by the Department. Each training program which desires to use a curriculum not approved by the Department shall submit the curriculum to the Department for approval prior to use in any course.

(c) Each training program is responsible for quality assurance of its training, and shall disseminate all Department training updates to the students and instructors.

(d) Each training program shall inspect and verify that each class facility used for any course at any locations is adequate for instructional purposes prior to scheduling a course at the location.

(e) Each training program shall ensure that all Department required equipment is in good, safe and operational condition. Sufficient quantities shall be made available for each course conducted. Equipment for~~ original First Responder,~~ Basic EMT, and Intermediate EMT~~, and Paramedic~~ courses must be dedicated for training purposes. ~~Equipment cannot be in service on an emergency vehicle at the time it is to be used in the classroom.~~ Equipment for Paramedic courses must be owned by the training program. Equipment shall be available for inspection by Department representatives at any time during a regularly scheduled class.

(f) Each training program shall ensure that an instructor/student ratio of 1:10 is maintained during all practical classroom lab activities.

(g) Each training program shall ensure that a qualified preceptor supervises each student during scheduled clinical experiences.

(h) Each training program shall issue a course completion certificate and/or course transcript, including the course authorization number, to each student successfully completing an approved course.

(i) Each training program shall assist all of their students eligible for National Registration with the completion of all required applications.

(j) Each training program shall administer a final written and practical examination for each course, and provide National Registry of EMT's practical examinations for both first responder and basic courses after course completion.

(k) The training program shall require instructors to follow the Department approved course syllabus, use lesson plans and provide instruction for all course objectives.

(l) For all courses which require a practical examination, as specified in OAC 310:641-5-11(9), the training program shall follow the National Registry Practical Examination Standards.

(m) Records for each course offered shall be maintained by the training program for at least three (3) years. Records shall include at a minimum attendance records, clinical experience summaries, student evaluations, student grades, a record of lab assistants and their documentation of qualifications, and skill sheets for both course and national registry practical examinations. National registry practical examination skill sheets are required for first responder and basic courses only.

310:641-7-15. Course approval

(a) Each training program shall submit a written course application to the Department on forms provided by the Department. The application shall be submitted at least thirty (30) days prior to the course start date and shall include, but not be limited to:

(1) Course information including type of course, location, start and end date, class session days and times, course coordinator,~~ clinical coordinator~~ and instructors, final practical examination date, and time and location;

(2) Course outline including date and time, topic, curriculum division and section number, instructor and location if different than those listed on the application for each class session; ~~and~~

(3) A list of locations and site coordinator for each location, if multiple locations via distance learning technology are used~~.~~; and

(4) A letter from the director and medical director of a certified first response agency, ambulance service or approved training institution documenting affiliation.

(5) The Department may approve course requests submitted that do not meet the requirements of OAC 310:641-7-15(a) if non-approval would be detrimental to the interest of the public health and safety.

(b) A course application submitted by a training program in good standing which meets all course requirements will be issued a course authorization number by the Department.

(c) Courses must be instructed by Department approved emergency medical services instructors. Persons other than certified emergency medical services instructors recognized as experts in a specific area may instruct in an emergency medical services course with prior approval from the Department. The content and effectiveness of the presentation remain the responsibility of the training program and primary emergency medical services instructor.

(d) For each course conducted by a training program rosters reflecting the students participating in a given course shall be submitted to the Department under the following guidelines:

(1) An initial student roster within twenty-one (21) days of the course start date;

(2) A final student roster within twenty-one (21) days of the course end date. This roster shall ~~only~~ identify students who have successfully completed all course requirements, withdrawn from the course, failed the course, or whose class work was incomplete;

(3) In exceptional circumstances, an amended roster may be submitted within forty-five (45) days of the original filing deadline, provided that the amendment be accompanied by the following:

(A) A written request for approval by the Training Institution EMS Coordinator;

(B) A statement describing the exigency or exceptional circumstance that necessitated the amendment; and,

(C) In cases of an amendment to a final roster, evidence that any added students have satisfactorily fulfilled and completed all of the course content and requirements.

(e) The Department may conduct quality management visits to any training program. Visits may include, but not be limited to class visits, instructor evaluations, student surveys, review of required records, and visits to clinical experience sites.

(f) The Department may invalidate all or any portion of a course conducted where a violation of the Act or rules has been substantiated.

~~(g) For course approval requests submitted that do not meet the requirements of OAC 310:641-7-15(a) the Department may provide approval if non-approval would be detrimental to the interest of the public health and safety.~~

PART 5. INSTRUCTOR QUALIFICATIONS

310:641-7-20. Instructor requirements

(a) **State Certified Emergency Medical Service Instructor.**

(1) A ~~register~~ registry of approved emergency medical services instructors shall be maintained by the Department. Each instructor candidate shall submit to the Department an application for initial ~~and renewal~~ instructor certification. The application shall be on forms provided by the Department and accompanied by current documentation of qualification. This application shall constitute authorization for any inspection or investigation by the Department.

~~(2) Instructor approval shall be indicated on the Emergency Medical Technician license upon successful re-licensure.~~

(~~3~~2) Qualifications for instructor certification include:

~~(A) Affiliation with an approved training program, licensed ambulance service or certified first response agency;~~

(~~B~~A) A resume or letter documenting two ~~Two~~ (2) years of direct field experience in emergency medical services within the previous five (5) years which meets or exceeds the level of training being taught; ~~and~~

(~~C~~B) Current ~~training~~ approval as a Basic Life Support Healthcare Provider Instructor (CPR) in accordance with American Heart Association (AHA) Instructor, American Red Cross Professional Rescuer Instructor, or National Safety Council CPR for the Health Care Provider Instructor standards. At the paramedic level, the instructor shall be ~~an~~ a current American Heart Association, Advanced Cardiac Life Support (ACLS) provider and a Pediatric Advanced Life Support (PALS), Pediatric Emergency Medicine (APLS), Pediatric Prehospital Care (PPC) or Pediatric Education for the Prehospital ~~Provider~~ Professional (PEPP) ~~certified~~ provider. Copies of all required documentation will be forwarded to the Department with application; and

(~~4~~C) Successful completion of a Department ~~certified~~ approved EMS Instructor Training Course or Fire Service Instructor I and/or II, with the EMS Instructor Training Bridge (ITC) Course or equivalent.

(b) **Emergency Medical Service Lab Assistant.**

(1) A file of qualified Lab Assistants shall be maintained by each certified training program, licensed ambulance service or certified first response agency including documentation of qualification.

(2) Qualifications for lab assistants include:

(A) Affiliation with an approved training program, licensed ambulance service or certified first response agency;

(B) Two (2) years of current experience in medical services which meets or exceeds the level of training being assisted or evaluated; and

(C) Any certification required for the skill being assisted or evaluated.

(c) **Emergency Medical Service Instructor Educator.**

(1) Instructor Training Courses (ITC) and Instructor Refresher Courses (IRC) shall be taught by a state certified Instructor Educator.

(2) ~~A register of approved emergency medical services instructor educators shall be maintained by the Department. Each instructor educator candidate shall submit to the Department an Instructor Educator addendum to the Instructor Certification Application for initial and renewal instructor educator certification. The~~An application for Instructor Educator shall be submitted on forms provided by the Department and accompanied by current documentation of qualification.

~~(3) An instructor educator certificate shall be issued to each qualified applicant.~~

(~~4~~3) Qualifications for Instructor educator include:

(A) Affiliation with an approved training program

(B) Current Oklahoma licensure as a Basic EMT or higher.

(C) Five (5) years experience as a EMS field provider.

(D) Current ~~certification~~ approval as an Oklahoma EMS Instructor

(E) Completion of the NHTSA/DOT EMS Instructor Training Course;

(F) Successful completion of ~~teaching~~ instruction of at least 3 major (initial) EMT courses at the Basic level or higher;

(G) Attendance at all mandatory meetings with the Department and other Instructor Educators.

~~(d) The Department may approve temporary instructors based on guidelines approved by the Council.~~

(4) EMS instructor educators must maintain EMS instructor certification(s). A registry of approved emergency medical services instructor educators shall be maintained by the Department.

310:641-7-21. Instructor ~~approval~~ and instructor educator renewal

(a) ~~Any application for approval or renewal submitted by an applicant pursuant to the Act and rules, shall constitute authorization for any inspection or investigation by the Department~~ Instructors and instructor educators shall submit an application for renewal.

(b) The Department may deny, refuse to renew, revoke, suspend or place on probation any instructor or instructor educator for reasons which include, but are not limited to:

(1) Failure to attend Department required workshops or mandatory Department meetings for EMS instructor educators;

(2) Failure to follow Department rules;

(3) Failure to maintain professional license or certification qualifications;

(4) Falsification of any training document~~, or~~;

(5) Failure to maintain professional conduct at all times when providing EMS instruction~~, or~~;

(6) Failure to obtain ~~required continuing education hours:~~

~~(A)~~ ~~Sixteen~~sixteen (16) hours of instructor continuing education during the two (2) year certification period for EMS instructors or to complete a Department approved EMS Instructor Refresher.

~~(B) Attendance at mandatory OSDH meetings for EMS instructor educators.~~

(c) This application shall constitute authorization for any inspection or investigation by the Department.

310:641-7-21.1. Instructor and instructor educator re-entry requirements

(a) If expired more than two (2) years, the applicant must complete a new Department approved Instructor Training Course (ITC) and reapply as an initial candidate for EMS Instructor.

(b) If less than two (2) years, the applicant must complete a Instructor Training Course Refresher.

PART 7. IN-SERVICE INSTRUCTION PROGRAM

310:641-7-30. Authorization

(a) Licensed ambulance services and certified first response agencies shall be authorized in-service instruction based upon the need for training and continuing education activities. In-service instruction is limited to refresher courses, first responder courses, continuing education and other training courses as designated by the Department.

(b) Ambulance services or first response agencies shall use certified instructors consistent with the requirements in 310:641-7-20. A guest presenter may be used provided a certified instructor is present and responsible for the training session.

(c) Ambulance service and first response agency personnel shall be the primary recipient of in-service instruction, however, in-service instruction may be provided to other ambulance services, first response agencies, and the public if approved by the service or agency head.

(d) All courses shall be approved as required in 310:641-7-15. Ambulance services and certified first response agency instructors may provide first responder and first responder refresher training to communities or other ambulance services according to the following guidelines:

(1) Instructors and/or ambulance services and certified first response agencies shall not charge for this instruction except for reimbursement for books, supplies and other reasonable expenses.

(2) Training shall be limited to the immediate service area of the licensed ambulance service, unless requested to provide such training by another ambulance service or first response agency.

(3) Courses must be approved and requested by the service or agency medical director.

(e) The Department may attend any in-service training as part of the quality management program.
(f) The Department may invalidate all or any portion of training conducted if a violation of the Act or rules has been substantiated.

310:641-7-53. Paramedic curriculum

Training programs ~~may~~ shall use ~~the United States Department of Transportation, National Highway Traffic Safety Administration (USDOT, NHTSA) National Standard Paramedic Curriculum, 1984 until June 1, 2001. After June 1, 2001~~ the ~~USDOT, NHTSA~~ USDOT/NHTSA National Standard Paramedic Curriculum, 1999 including the 2000 Oklahoma Paramedic Curriculum Implementation Guidelines, March 2000 as approved by the Oklahoma Emergency Response Systems Development Advisory Council and adopted by the Department. This shall be the official paramedic curriculum.

PART 13. SEMI-AUTOMATED EXTERNAL DEFIBRILLATOR TRAINING

310:641-7-60. Approved program providers

Semi-automated external defibrillator (SAED) training providers approved by the American Red Cross, American Heart Association, National Safety Council or other Department approved training programs shall be deemed acceptable to the Department as approved training programs for persons administering SAED ~~emergency defibrillation~~ in accordance with 76 O.S. Supp. 1999 ' 5A. Training programs offered by approved providers shall be at least four (4) hours in length, cover the use of the semi-automated external defibrillator and cardiopulmonary resuscitation in accordance with American Heart Association Standards.

310:641-7-61. Approved instructors

Instructors approved by the American Red Cross, American Heart Association, National Safety Council, or ~~a~~ other Department approved training program to provide semi-automated external defibrillation and cardiopulmonary resuscitation training shall be deemed acceptable to the Department as approved instructors of training programs for persons administering emergency defibrillation in accordance with 76 O.S. Supp. 1999 ' 5A.

[OAR Docket #06-1054; filed 5-23-06]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 657. CERTIFIED WORKPLACE MEDICAL PLANS

[OAR Docket #06-1055]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Chapter 657. Certified Workplace Medical Plans [AMENDED]

AUTHORITY:
Oklahoma State Board of Health, Title 85 O.S. Supp. 2005 Section 14.3(H) and 63 O.S. Section 1-104 et seq.

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SUPERSEDED EMERGENCY ACTIONS:
n/a

INCORPORATION BY REFERENCE:
n/a

ANALYSIS:
The purpose of the proposed rulemaking action is to implement a site visit protocol for employees of the State Department of Health to perform an inspection of a certified workplace medical plan as per provisions in Title 85 O.S. Supp. 2005 Section 14.3(G). Additionally, the proposal clarifies various sections of the existing rules by changing the terms "health professional" to "provider" and "enrollee" to "employee". Obsolete financial requirements as well as the enrollment and election process are revoked. Forty (40) sections are affected.

CONTACT PERSON:
Boyd E. Murphy, Director, Managed Care Systems, Health Resources Development Service, Protective Health Services, (405) 271-9444 Ext 57268, Room 1010, State Department of Health Building, 1000 NE 10th Street, Oklahoma City, OK 73117-1299, boydm@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

310:657-1-2. 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 Workers' Compensation Act, Title 85 of the Oklahoma Statutes.

~~**"Case management"** means a coordinated set of activities conducted by the Plan's qualified representative for services to an individual.~~

"Commissioner" means the Commissioner of Health.

"Department" means the Oklahoma State Department of Health.

~~**"Enrollees"** means workers eligible to participate in a Plan offered through an insurer or an insured.~~

"Facility" means a licensed, certified or accredited institution or health care setting which renders prescribed medical or health care service.

"Health professional" means an individual who is licensed or otherwise authorized under applicable laws, rules or standards to deliver medical or health services.

"Insurer" means a self-insured employer, a group self-insurance association plan, or an employer's workers' compensation insurance carrier.

"Peer" means a health professional who holds a non-restricted license in Oklahoma or another state and practices a similar specialty as typically manages the service under review.

"Person" means an individual, partnership, association, corporation, or other public or private legal entity including an agency.

"Plan" means a workplace medical plan.

"Provider" means any health professional, facility or other entity licensed or otherwise authorized under applicable laws, rules or standards to furnish medical or health service.

SUBCHAPTER 3. ~~HEALTH PROFESSIONAL~~PROVIDER CREDENTIALING

310:657-3-1. General considerations

The Plan's credentialing program shall ensure that each ~~health professional~~provider is competent and qualified to offer medical or health services. A Plan may use other criteria in deciding which of the properly credentialed ~~health professionals~~providers shall be selected to participate in the Plan.

310:657-3-2. Credentialing responsibilities

(a) The Plan shall credential each ~~health professional~~provider under written policies, and shall complete credentialing before ~~their~~the provider's contract becomes effective. The Plan shall not list the ~~health professional~~provider in the provider directory or marketing materials until credentialed.

(b) The Plan shall establish a body of professional peers to review and approve the Plan's credentialing policies. A health professional designated by the Plan shall oversee credentialing.

(c) The Plan shall obtain proof of the applicant's current authority to practice a health profession. Proof shall be based on evidence from the source issuing the credential. The Plan shall retain all records and documents on a ~~health professional~~provider for at least five (5) years. Nothing in OAC 310:657-3 requires public disclosure of information which is confidential following applicable law.

(d) At least once every five (5) years, the Plan shall verify the professional's authority to practice.

310:657-3-3. ~~Health professional~~Provider review process

(a) A ~~health professional~~provider who is subject to credentialing shall have the right to review all credentialing information obtained by the Plan, and to review the credentialing procedures.

(b) The Plan shall advise the ~~health professional~~provider of any information that does not meet the Plan's credentialing standards.

(c) Each Plan shall have an appeal process by which a ~~health professional~~provider may submit additional information and request further review.

SUBCHAPTER 5. QUALITY ASSURANCE

310:657-5-3. Reporting and disclosure requirements

The Plan, either directly or through contract, shall document and communicate information about quality assurance.

(1) In marketing materials the Plan shall include a summary of its quality assurance activities.

(2) ~~In the provider directory, the~~The Plan shall ~~include~~make available to the employee, a description of its quality assurance process and a statement of ~~enrollee~~employee rights ~~about participation~~in the Plan.

(3) The Plan shall share information with its regulatory agencies, providers and the public about its quality assurance activities and progress.

310:657-5-4. ~~Examinations~~Inspections

~~(a) The Commissioner may examine the quality of a Plan's medical and health services as often as necessary. An examination shall occur at least every five (5) years.~~

~~(1) The Commissioner may contract, or cause the Plan to contract, with a qualified entity to conduct the examination.~~

~~(2) The Commissioner may accept the report of an examination made by the regulatory authority of another state instead of such examination.~~

~~(b) The Plan and its providers shall make available information necessary for the quality examination.~~

~~(c) The Plan shall not issue marketing or solicitation materials which advertise, identify or judge the results of a quality examination completed by the Commissioner.~~

(a) For purposes of conducting the site visit, the Department may inspect any person, or the business of any person, insofar as such inspection is necessary or material to the investigation of the Plan.

(b) The refusal of any Plan by its officers, directors, employees or agents to submit to the inspection or to comply with any reasonable written request of the inspectors shall be grounds for suspension, revocation or nonrenewal of any certification or authority held by the Plan to engage in business subject to the Department's jurisdiction.

(c) In the case of a annual site visit, the Department may provide advance notice of not longer than 15 working days to the Plan by telephone and/or written means of communication.

(1) Such notification may include a request for the Plan to provide case, dispute and/or grievance listings to the

Department to allow Department consideration and possible selection of samples prior to arriving at the Plan's office.

(2) In advance of an announced site visit or upon arrival of an unannounced site visit, the Department may request to have Plan materials and personnel available which includes, but not limited to the following:

(A) Current Organizational Chart;

(B) Listing of current personnel and those person's direct-dial telephone numbers or extensions;

(C) Assignment of a single Plan representative to serve as the Department's primary contact during the course of the on-site inspection;

(D) Current Master Client Report, or other comprehensive listing of contracts currently or previously in place, including counts of CWMP participants;

(E) Current listing of contracted Insurers and/or Insureds; and

(F) Assignment of one or more persons to:

(i) Conduct a preliminary walk-through tour of the offices;

(ii) Explain to the Department staff how physical files are arranged;

(iii) Explain to the Department staff what files are electronic only and will require a Department request to the Plan's primary contact person for printing or visual inspection;

(iv) Explain the process for entering or leaving the Plan's office;

(v) Explain how case management is assigned;

(vi) Explain how the Plan monitors caseloads;

(vii) Explain how the Plan receives cases from the payer.

(G) Provision for Departmental file reviews, of any written:

(i) Case management policies and procedures;

(ii) Utilization review policies and procedures;

(iii) Case management forms;

(iv) Utilization review forms;

(v) Case management form letters;

(vi) Utilization review letters;

(vii) Communication standards;

(viii) Account specific instructions;

(ix) List of all routine audits or other QA procedures; and

(x) List of the prior periods' explicit Medical Director or Peer Reviews.

(H) Specific personnel, by title, that the Department initially anticipates interviewing during the course of the site visit to ensure that those persons will be available.

(I) Such other material that the Department requires to be assembled for inspection such as Policies and Procedures changed since the last application for certification or renewal.

(d) The Department is not required to provide advance notice of a site visit to a Plan in an instance where the Department has reason to believe that the Plan is either:

(1) Not operating in accordance with its application, the Act, or OAC 310:657; or

(2) Not adequately providing a claimant(s) with medical services or medical management.

(e) Upon the completion of the site visit and review of the findings, the Department shall prepare a report with a determination that a Plan is or is not operating in accordance with its latest application. This report may also include recommendations for follow-up and/or corrective actions.

(f) The Plan shall not issue marketing or solicitation materials that advertise, identify or judge the results of an investigation completed by the Department.

SUBCHAPTER 7. UTILIZATION REVIEW

310:657-7-1. Purpose and intent

(a) The Plan's utilization review program shall assist the manager ~~of~~ in providing services ~~provided~~ to an individual injured worker and shall assist administrators ~~of~~ in delivering services ~~delivered~~ to all ~~enrollees~~employees.

(b) Nothing in OAC 310:657-7 restrains a Plan or provider from supplying information to any person required by the Act.

310:657-7-3. Operational requirements

(a) The utilization review program shall have criteria that are based on evidence and regularly evaluated.

(1) Practicing ~~health professionals~~providers shall be involved in developing the review criteria.

(2) After refusing to authorize a service, the Plan shall provide the review criteria for that service upon request to affected providers, the injured worker, and the Commissioner.

(b) Qualified ~~health professionals~~providers shall supervise the utilization review program. A licensed, board-certified clinical ~~health professional~~provider shall evaluate the appropriateness of any decision to deny a service to an injured worker.

(c) Decisions on whether or not to authorize services shall be issued following the requirements of OAC 310:657-7-4.

(1) Decisions shall be made using pertinent information and consulting with the treating ~~health professional~~provider.

(2) The Plan shall ensure that reviewers consistently apply criteria.

(d) The Plan shall routinely assess the effectiveness of the utilization review program.

(e) Data systems shall be sufficient to support utilization review activities.

(f) If the Plan delegates any activities to a utilization review organization, adequate oversight shall be maintained that includes:

(1) A description of utilization review organization activities, including reporting requirements;

(2) Formal approval of the utilization review organization's program by the Plan; and

(3) Evaluations of the utilization review organization.

(g) Utilization review shall be coordinated with other medical management activities.
(h) The Plan or its utilization review organization shall provide toll-free telephone access to its staff during normal business hours.
(i) When conducting utilization review, the Plan or utilization review organization shall collect only information necessary for assessing the appropriateness of, and need for, services.

310:657-7-4. Utilization review decision

(a) The Plan shall complete any individual decision to authorize or deny a non-emergency service within two (2) working days after obtaining all necessary information. Necessary information includes any clinical evaluation of an injured worker by a ~~health professional~~provider other than the one originally recommending a proposed service.
(b) The Plan shall notify the provider by telephone within twenty-four (24) hours after the decision to authorize or deny a service. The Plan shall send confirmation of the decision within two (2) working days after deciding.
(c) If the injured worker is an inpatient or undergoing treatment, the Plan shall communicate to the provider any decision to authorize or deny the service by telephone within twenty-four (24) hours after the decision. The Plan shall send confirmation to the provider within two (2) working days after deciding. A decision on an extended stay shall identify the additional number of days or services approved.
(d) A decision to authorize or deny coverage for an emergency service shall be based on the patient's presenting symptoms.

310:657-7-6. Dispute resolution procedures

(a) The Plan shall have procedures for dispute resolution on issues related to medical care under the Plan. This procedure may be different than the grievance procedure for resolving matters not directly related to medical care under the Plan. A dispute resolution procedure shall be available to the injured worker and to the attending or ordering ~~health professional~~provider.
(b) The Plan's procedure shall be designed to resolve each dispute within ten (10) days after receipt, unless information is not available in the normal course of business.
(c) Each dispute shall be evaluated by an appropriate peer or another licensed health professional as mutually agreed by the parties. The evaluating professional shall not have been involved in the initial decision to deny a service.
(d) The Plan shall notify the injured worker and affected provider of its decision.
(e) An injury requiring emergency services shall be treated immediately, without regard for the ten (10) day dispute resolution period.

310:657-7-7. Disclosure requirements

(a) In materials provided to insurers, insureds and ~~enrollees~~employees, the Plan shall include a summary of its utilization review procedures.
(b) The Plan shall clearly disclose ~~enrollee~~employee rights and responsibilities relating to quality assurance and utilization review.
(c) The Plan shall provide to ~~enrollees~~employees a toll-free telephone number for information about the Plan's utilization review program.

SUBCHAPTER 9. GEOGRAPHIC SERVICE AREAS

310:657-9-1. Access to providers

(a) The Commissioner shall presume a proposed service area to be reasonable if the mean travel time is thirty (30) minutes or less from six (6) points on the area boundary to the nearest primary care delivery sites in that area, and sixty (60) minutes or less to specialty service providers.
(b) The Commissioner may approve a service area with travel times of greater than thirty (30) minutes to primary services, or sixty (60) minutes to specialty services, based on the following:
(1) Providers are not available in the area;
(2) Providers are available but do not meet the Plan's reasonable credentialing requirements;
(3) Providers are unwilling or unable to enter a reasonable health services contract with the Plan;
(4) Residents of the area customarily travel longer times to reach medical and health providers; or
(5) Providers have access to air ambulance services to transport injured workers.
(c) OAC 310:657-9 shall be construed to foster Plans in all areas of Oklahoma. These provisions shall not be interpreted to threaten the health and safety of ~~enrollees~~employees or to impair the present system of service delivery in Oklahoma.

310:657-9-3. Access to services

(a) Medical and health services shall be provided or arranged in the service area by the Plan.
(b) Services shall be available to the Plan's ~~enrollees~~employees with reasonable promptness considering:
(1) Geographic location, hours of operation, and provisions for after-hours services; and
(2) Staffing patterns and types of ~~health professionals~~providers.
(c) A Plan whose service area is located in a nonmetropolitan area may provide service outside its area if:
(1) The service is not primary or emergency care; and
(2) Providers in the area are not sufficient to offer the service.
(d) The Plan shall ensure continuity of services using at least the following:
(1) A ~~health professional~~provider responsible for coordinating the ~~enrollee's~~employee's services; and
(2) A system to report on eligibility and services rendered to the injured worker.

SUBCHAPTER 11. GRIEVANCE SYSTEM

310:657-11-2. Grievance forms

A Plan shall provide a grievance form for any enrollee, employer, insurer, insured or provider who wishes to file a written grievance. The form shall include information about the grievance system to help the person in completing and filing the form. Nothing in OAC 310:657 prevents a Plan from using other methods, such as a toll-free telephone line, to correct problems before the ~~enrollee~~employee files a written grievance.

SUBCHAPTER 13. OWNERSHIP AND CONTROL OF A PLAN

310:657-13-1. Ownership

The Plan's ownership, control and management shall have the knowledge, skills and experience that will make the Plan's operation beneficial to ~~enrollees~~employees. The Commissioner shall not grant or renew a certificate when the Plan's ownership, control, or management is under the control of any person whose operations are or have been marked by the following:

(1) business practice or conduct that is to the detriment of the public, stockholders, investors, or creditors; or

(2) improper manipulation of assets or accounts.

SUBCHAPTER 15. FINANCIAL REQUIREMENTS

310:657-15-4. Fidelity bond [REVOKED]

~~(a) The Plan shall provide evidence of fidelity coverage in addition to an errors and omissions insurance policy and other liability coverage. The named insured on the bond shall be the Plan. Insurance Services Office (ISO) or Surety Association of America bond forms shall be acceptable. The fidelity bond shall be filed with the application.~~

~~(1) The bond shall be maintained through the term of certification, and shall provide for discovery of losses at least one (1) year after termination or cancellation.~~

~~(2) The bond shall be executed by a surety company licensed by the Oklahoma Insurance Commissioner.~~

~~(3) The bond shall be continuous in form or may be renewed annually. If renewed annually, the Plan shall file evidence of renewal each year.~~

~~(4) Reimbursement to a Plan shall be from the first dollar of loss up to the full amount for which the person causing the loss is bonded.~~

~~(b) The amount of the bond shall be maintained at the greater of fifty thousand dollars ($50,000) or ten (10) percent of the value of services the Plan provided in the prior calendar year, rounded to the nearest ten thousand dollars ($10,000).~~

~~(c) The bond shall cover thefts, acts of dishonesty and embezzlement committed by the Plan's employees, officers, directors or agents.~~

~~(d) The Plan shall ensure that the Commissioner is notified of:~~

~~(1) Any lapse in coverage; or~~

~~(2) Termination of coverage at least thirty (30) days before termination.~~

310:657-15-5. Preference of claims [REVOKED]

~~(a) If either the errors and omissions insurance policy or the fidelity bond is insufficient to pay all claims, then claims shall be satisfied proportionately.~~

~~(b) A provider's claim has the same priority as an insurer's, an insured's or injured worker's claim, if the provider agrees not to assert claims against the insurer, insured or injured worker.~~

~~(c) When the Plan's certificate is revoked, the Commissioner may communicate with the company issuing the fidelity bond or insurance policy to help claimants recoup covered losses.~~

310:657-15-6. Liability insurance

In addition to the errors and omissions insurance policy ~~and the fidelity bond,~~ each Plan shall have liability insurance coverage to protect the interests of injured workers. The insurance may include excess or stop loss, medical malpractice, and general liability coverage.

310:657-15-7. Provider contracts [REVOKED]

~~(a) Each contract between a Plan and a participating provider shall be in writing. The contract shall state that an injured worker shall not owe any sums otherwise due from the Plan, insurer or insured under the contract.~~

~~(b) The contract shall set penalties against any provider who attempts to collect from an injured worker any sums owed by the Plan, insurer or insured under the contract.~~

~~(c) No participating provider, agent, trustee or assignee shall attempt to collect from an injured worker any sum owed by the Plan, insurer or insured under the contract.~~

SUBCHAPTER 17. CONTRACTS AND SERVICE EXPLANATIONS

310:657-17-1. Purpose

The purpose of this subchapter is to ensure that a Plan furnishes to each insurer, ~~or~~ insured, or provider a complete and understandable copy of their agreement. The contract shall not contain unjust, unfair, misleading or deceptive provisions.

310:657-17-2. Contents of the insurers' or insureds' contract

Each contract shall contain a clear statement of the following:

(1) Plan's name and address;

(2) Eligibility requirements;

(3) Medical and health services in the area;
(4) Emergency care services and procedures for authorizing emergency services by non-Plan providers;
(5) Out of area services;
(6) Limits and excluded items;
(7) ~~Enrollee~~Employee termination;
(8) ~~Enrollee~~Employee reinstatement;
(9) Claims procedures, if any;
(10) Dispute resolution and grievance procedures;
(11) Continuing coverage;
(12) Extension of benefits;
(13) Substitution of creditors;
(14) Geographic service area;
(15) Entire contract provision;
(16) Term of coverage;
(17) Renewing contract;
(18) Canceling contract;
(19) Reinstatement of contract;
(20) Grace period; and
(21) Conformity with state law.

310:657-17-5. Service changes

Each Plan shall provide a ~~statement~~notice of any service changes ~~for an upcoming benefit year~~ to each insurer or insured with which it contracts. The ~~statement~~notice shall identify the proposed services which differ from the current services. Such notice shall be provided at least thirty (30) days before the ~~enrollment deadline~~effective date of the change.

310:657-17-6. Provider contracts

(a) Each contract between a Plan and a participating provider shall be in writing. The contract shall state that an injured worker shall not owe any sums otherwise due from the Plan, insurer or insured under the contract.
(b) The contract shall set penalties against any provider who attempts to collect from an injured worker any sums owed by the Plan, insurer or insured under the contract.
(c) No participating provider, agent, trustee or assignee shall attempt to collect from an injured worker any sum owed by the Plan, insurer or insured under the contract.

SUBCHAPTER 21. APPLYING FOR A CERTIFICATE

310:657-21-2. Deadlines for filing

(a) The application shall be filed ~~at least thirty (30) days~~by the Plan and approved by the Department before beginning operations.
(b) The application shall be filed at least thirty (30) days before a transfer of ownership of an existing Plan.
(c) The Plan shall apply to renew the certificate every five (5) years. The application to renew a certificate shall be filed at least thirty (30)days before the certificate expires.
(d) The Commissioner shall notify the applicant of incomplete items within thirty (30) days after receipt of the application. The applicant shall provide additional information within ninety (90) days after receipt of the notice. Failure to submit the requested information shall result in dismissal of the application. The Commissioner and the applicant may mutually agree to extend the deadline up to ninety (90) days.

310:657-21-4. Description of application form

Each application for a certificate shall be accompanied by a non-refundable filing fee. The filing fee shall be the fee set in the Act. The fee shall be paid by check to the Oklahoma State Department of Health.

(1) The application for a certificate requests the following:
(A) A general description of the Plan and its operations, including the locations, types, and hours of providers;
(B) A copy of the Plan's basic organizational document, such as the articles of incorporation or association, partnership or trust agreement, and all amendments;
(C) A copy of bylaws or similar document, regulating the Plan's conduct;
(D) A list of names, addresses, and official capacities of all persons responsible for the Plan, including:
(i) ~~All members of the governing body, the officers and directors of a corporation, and~~ Each corporate officer and director of a corporation; each manager of Limited Liability Company; those owners of a corporation, the partners or associates of a partnership or association~~;~~, or members of a Limited Liability Company that own five percent (5%) or more of the stock or controlling interest in the Plan, Corporation, Partnership, Association, or Limited Liability Company; and of the person who will be the day-to-day Plan administrator; and
(ii) Disclosure of any contracts or arrangements between them and the Plan, including any appearance of a conflict of interest;
(E) The medical director's name, address, phone number, Oklahoma license number, and biographical information and address;
(F) The ~~chief executive officer's~~ name~~,~~ and biographical information of the person who will be the day-to-day Plan administrator and address;
(G) A description of the geographic areas to be served;
(H) A description of any facilities to be used;
(I) The categories and names of all participating ~~health professionals~~providers and facilities;
(J) The policies for credentialing ~~health professionals~~ and ~~for~~ selection of providers;
(K) Projections for five (5) years which include ~~enrollment levels~~employee population, primary physician to ~~enrollee~~employee ratios, specialty care, laboratory, x-ray and hospital services, and revenues and expenses;

(L) A financial statement for the Plan ~~based on generally accepted~~prepared in accordance with accounting principles generally accepted in the United States of America, and related documents showing the Plan's financial capabilities;

(M) Forms of all provider and service contracts;

(N) Forms of all contracts with insurers and insureds, showing the services to which ~~enrollees~~employees are entitled;

(O) Proposed marketing or advertising materials;

(P) Descriptions of the case management, utilization review and quality assurance processes, including treatment protocols, adopted by the Plan;

(Q) A description of the Plan's or providers' medical record system;

(R) Policies for developing and reporting data;

(S) Policies for dispute resolution and grievance reviews;

(T) A plan for an ~~enrollee~~employee education program;

(U) A description of the financial incentives to be used to reduce costs and control use;

(V) A description of the Plan's workplace health and safety consultative services for employers;

(W) The provider directory;

(X) Contact person's name, address and telephone number; and,

(Y) Such other information as may be prescribed by the Commissioner in the application for a certificate.

(2) The application to renew a certificate requests the following:

(A) Any changes in the information provided in OAC 310:657-21-4; and

(B) Data on the Plan's experience, including revenues and expenses, changes in financial position, ~~number of enrollees~~employee population per month, hospital days and ambulatory encounters per injured worker, encounters by type of health professional, disputes and grievances processed, peer review, quality control, medical records and utilization review systems.

(3) The Commissioner may require such other information as necessary to decide on the application.

SUBCHAPTER 23. APPROVAL OR DENIAL OF APPLICATION

310:657-23-1. Conditions for approval

The Commissioner shall issue or renew a certificate when the Commissioner finds that the Plan meets the requirements of the Act and OAC 310:657.

(1) Necessary medical and health services shall be provided by the Plan as guaranteed in the Plan's contracts with insurers and insureds and in the provider directory.

(A) These services shall be provided without bias for, or against, any type of ~~health professional~~provider.

(B) The Commissioner shall review services available considering ~~enrollment size~~employee population and characteristics, and locations and hours of providers.

(C) The Plan may offer necessary medical and health services directly, or may arrange services through contracts or arrangements with providers, or may both offer and arrange services.

(2) All providers shall practice under licensing, certification or credentialing requirements of applicable laws, rules and professional standards.

(3) Medical and health services shall be available within the Plan's service area, considering the geographic location of the Plan and its providers, hours of operation, and population density.

(4) The Plan shall appoint a medical director qualified under the licensing or credentialing requirements of Oklahoma.

(5) The Plan shall maintain or arrange quality assurance, peer review, utilization review, dispute and grievance resolution, case management, and workplace health and safety consulting services.

(A) The Commissioner may consider the Plan's compliance with the standards of a recognized voluntary reviewing entity. Before accepting findings from another entity, the Commissioner shall affirm that the standards in use by the entity meet or exceed the standards set by the Commissioner.

(B) The Commissioner may approve a reasonable phase-in of these systems, based on the length of time the Plan has operated and the number of ~~enrollees~~employees.

(C) The Commissioner shall consider a license, certificate or approval granted by an agency of the State of Oklahoma or the federal government.

(6) The persons responsible for the Plan have knowledge, skills and experience to operate the Plan.

(7) The Plan shall demonstrate financial responsibility and may reasonably be expected to meet its obligations to injured workers. The Commissioner shall consider the resources of the Plan's owner and may also consider the following:

(A) The financial soundness of any arrangements for paying providers, the accounting methods to control any funds paid to the Plan for providers, and the schedule of charges;

(B) Working capital; or

(C) Any agreement with providers for services.

310:657-23-2. Duration of certificate

The Commissioner may issue a certificate to a Plan for five (5) years. The Commissioner may specify conditions on an initial certificate which shall be satisfied before the Plan ~~accepts enrollment or~~ offers medical and health services to employees.

SUBCHAPTER 25. WITHDRAWAL OF A CERTIFICATE

310:657-25-1. Conditions to revoke or suspend

The Commissioner may revoke or suspend a certificate issued to a Plan, or take such other steps as appropriate, if the Plan:

(1) Is not in compliance with the Act or OAC 310:657;

(2) Violated its health service contracts;

(3) Is unable to fulfill its obligations under outstanding contracts for the benefit of ~~enrollees~~employees;

(4) Attempted to merchandise its services in such a manner as to misrepresent its services or capacity for service or has engaged in deceptive, misleading, or unfair practices in advertising, merchandising or promoting towards providers, ~~enrollees~~employees, insurers or insureds;

(5) Did not correct an impairment as required under OAC 310:657-15-~~9~~6; or

(6) Knowingly uses or has knowingly used a provider who does not have a license, certificate or other authority to practice or furnish medical or health services.

310:657-25-2. Suspended certificate

(a) While a Plan's certificate is suspended, the Plan shall not ~~enroll~~, advertise or solicit additional business.

(b) The order suspending the certificate shall specify the period of suspension and conditions to be met for reinstatement.

310:657-25-3. Revoked certificate

(a) The Plan shall conduct no business except as may be essential to the orderly conclusion of its affairs when a Plan's certificate is revoked. The Commissioner may order such operations as needed to afford ~~enrollees~~employees a practical opportunity for medical and health services.

(b) The Plan shall not apply for certification for at least two (2) years after a certificate is revoked. The Plan shall follow the procedures for an initial application specified at OAC 310:657-21 and shall submit evidence that the conditions causing the revocation have been corrected.

SUBCHAPTER 27. REPORTS AND FILINGS

310:657-27-1. Annual reports

(a) By ~~March 1~~ May 1 of each year, the Plan shall file:

(1) Financial statements which exhibit the Plan's financial condition on December 31 of the prior year and its income and expenses that year. These statements shall be prepared ~~under~~ in accordance with ~~generally accepted~~ accounting principles generally accepted in the United States of America. The Plan shall supplement the statements with any information requested by the Commissioner. Such statements shall be subscribed and sworn to by the president, secretary and other officers, with original signatures. A statement of financial condition shall include:

(A) A balance sheet; and

(B) Revenues and expenses;

(2) Summaries of the grievance and dispute resolution activities in the preceding year.

(b) By May 1 of each year, the Plan shall report:

(1) Service volume for the prior year;

(2) Results of the quality assurance procedures;

(3) Providers as of December 31 of the prior year; and

(4) Number of ~~enrollees~~employees by zip code of residence or work site as of December 31 of the prior year.

310:657-27-2. Application form changes

Any material change in the information submitted in the application shall be submitted to the Department, including:

(1) The approved geographic service area or the organizational structure, including owner or operator;

(2) Provider agreements which may affect services available to ~~enrollees~~employees, at least thirty (30) days before execution or termination of such agreements;

(3) Any request for changes in the approved quality assurance program, at least thirty (30) days before the proposed change;

(4) The chief executive officer or medical director, to be reported upon the termination or starting of employment, with biographical information for the new appointee;

(5) Ten (10) percent or more in provider hours of operation;

(6) Essential content in marketing materials, before issuance; and,

(7) Approval issued by a voluntary body or agency and relied upon by the Commissioner under OAC 310:657-23.

SUBCHAPTER 29. RESTRICTED AND PROHIBITED ACTS

310:657-29-1. Restricted ~~enrollment~~provision of services

A Plan which has been granted a certificate to operate shall ~~enroll~~provide services only those persons who work, reside, or work and reside in its approved geographic service area.

310:657-29-2. Prohibited acts

(a) No person may operate a Plan in Oklahoma, nor use the phrase "workplace medical plan," nor imply that it is a workplace medical plan, unless that person first obtains a certificate.

(b) No Plan shall imply that certification qualifies the Plan to provide services except as authorized under the Act and OAC 310:657.

(c) A Plan, its employees and agents shall not:

(1) Pay claims reviewers based on reductions, unless the reductions are based on uniformly applied protocols designed to detect billing errors and duplicate charges;

(2) Compel an injured worker or a provider to:
(A) Accept less than the full settlement of a claim;
(B) File suit to obtain full settlement;
(C) Accept a lesser, interim figure as a premature final settlement; or
(3) Knowingly misrepresent reimbursement criteria and time frames to ~~enrollees~~employees, a provider, an insurer, an insured, or their representatives.

SUBCHAPTER 31. TERMINATING AND CONTINUING SERVICES

310:657-31-1. Terminating ~~contracts~~services

(a) A Plan shall notify an insurer, ~~or insured~~ an employer, providers, and open cases at least sixty (60) days before terminating services or not renewing the insurer's, ~~or insured's~~employer's or provider's contract.
(b) ~~An agreement between a provider and a Plan shall require the provider to notify the Plan at least sixty (60) days before termination of the agreement.~~Before terminating services, a plan shall make all necessary arrangements to provide the employer/payer with the medical records and all open or recent cases that have not previously been provided.
(c) ~~A Plan shall provide for continuity of services to any worker who confined in an inpatient facility when the contract terminates.~~An agreement between a provider and a Plan shall require the provider to notify the Plan at least sixty (60) days before termination of the agreement.

310:657-31-2. Bankruptcy strategy [REVOKED]

~~Each Plan shall have a bankruptcy strategy to continue services during the contract period and for any injured worker who is in an inpatient facility. The Commissioner may require the plan to include one (1) or more of the following:~~
~~(1) Insurance to cover the expenses for continued services after a bankruptcy;~~
~~(2) Provisions in contracts that obligate the provider to deliver services until the worker's discharge from an inpatient facility;~~
~~(3) Financial reserves;~~
~~(4) Acceptable letters of credit; or~~
~~(5) Other arrangements to ensure that services are continued as specified above.~~

310:657-31-3. ~~Disenrollment~~Dismissal from the Plan for cause

A Plan may request ~~disenrollment~~dismissal from the Plan of an ~~enrollee~~employee for documented abusive, disruptive or threatening behavior which impairs the Plan's ability to provide services. ~~Disenrollment~~Dismissal shall comply with the insurer's or insured's contract.

SUBCHAPTER 33. POWERS OF A PLAN

310:657-33-1. Powers

The powers of a Plan include the following:
(1) Making transactions between affiliated entities, including loans and the transfer of responsibility under all contracts between affiliates or between the Plan and its parent;
(2) Furnishing medical and health services through providers, associations or agents which contract with or are employed by the Plan;
(3) Contracting with any person for the performance on its behalf of functions such as marketing~~, enrollment~~ and administration; and
(4) Marketing of products with an insurer or insured, if the company offering each product is clearly identified.

SUBCHAPTER 35. ENROLLMENT AND ELECTION PROCESS [REVOKED]

310:657-35-1. Obligations of Plan and insurer or insured [REVOKED]

~~(a) The Plan shall provide to the insurer or insured the enrollment notice and election form required in this Subchapter at least twenty-five (25) days prior to the date when an employee must make an election.~~
~~(b) The form provided by the Plan to insurers or insureds shall be the notice and election form published and distributed by the Commissioner pursuant to OAC 310:657-35-2~~
~~(c) The contract between the Plan and the insurer or insured shall obligate the insurer or insured to accept responsibility for distributing the enrollment notice and election form to employees in accordance with timeframes provided in 85 O.S. Supp. 1998, Section 14.2.~~

310:657-35-2. Description of the notice and election form [REVOKED]

~~The enrollment notice and election form shall contain the following:~~
~~(1) Space for information identifying the employee; and~~
~~(2) Information and space required by 85 O.S. Supp. 1998, Section 14.2.~~

[OAR Docket #06-1055; filed 5-23-06]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 661. HOSPICE

[OAR Docket #06-1056]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
310:661-1-2. [AMENDED]
Subchapter 2. Licenses
310:661-2-1. [AMENDED]

310:661-2-2. [AMENDED]
310:661-2-4. [AMENDED]
310:661-2-5. [AMENDED]
310:661-2-6. [AMENDED]

AUTHORITY:
Oklahoma State Board of Health; 63 O.S. Section 1-104 et seq.; and Title 63 O.S. Section 1-860.1 et seq.

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n/a

ANALYSIS:
The amendments to Subchapter 1 add definitions required to implement statutory changes enacted during the first session of the 50th Legislature, which requires the Department to create a "first-year" category of hospice licensure. Additional conforming changes to Subchapter 2 were made to describe the initial and renewal application, required inspection, and license issuance and expiration processes. Changes to the Hospice Licensing Act (the Act) removed the specific licensure fee schedule set by statute. These proposed changes establish a fee structure under the Department's general authority to set licensure fees: 1) $500.00 first-year application fee, 2) $1500.00 first-year license fee, 3) $2000.00 permanent license, 4) $500.00 renewal of a permanent license. This fee structure represents an increase of $1500.00 for the initial licensure year and for the first year for which a permanent license is held; the fee to renew a license is unchanged.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

310:661-1-2. 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 Oklahoma Hospice Licensing Act, 63 O.S. 1991, " 1-860.1 et seq.

"Attending physician" means a doctor of medicine or osteopathy, identified by the patient or representative at the time the patient or representative elects to receive hospice care, as having the most significant role in the determination and delivery of the patient's medical care.

"Continuous care" means nursing care that is provided by a skilled nurse or a qualified hospice aide for as much as 24-hours a day during periods of medical crisis as necessary to maintain a hospice patient at their place of residence.

"Department" means the Oklahoma State Department of Health.

"Employed" means contracting with a person for services, regardless of compensation. This term also includes volunteers.

"Fast-track" The process where advance approval may be secured for construction starts while design details are completed.

"First-year license" means a license issued for the initial twelve (12) month license period.

"Follow-up inspection" means the inspection by representatives of the Department that shall occur after a hospice has provided hospice services for at least six (6) months.

"Governing body" means a person, persons, or legal entity that is legally responsible for the conduct of the facility as an institution and carries out the functions, ownership, and governance in accordance with these regulations and the laws of this state.

"License" means a first-year or permanent hospice license issued pursuant to the Act and these rules.

"Licensed independent practitioner" means any individual permitted by law and by the licensed hospice to provide care and services, without direct supervision, within the scope of the individual's license and consistent with clinical privileges individually granted by the licensed hospice. Licensed independent practitioners may include advanced practice nurses with prescriptive authority, physician assistants, dentists, podiatrists, optometrists, chiropractors, and psychologists.

"Medical Crisis" means an event or situation in which a registered nurse, through direct assessment of the hospice patient, determines that the patient has entered into a period of crisis which requires a physician's intervention and continuous nursing care to achieve palliation or management of acute medical symptoms. Peaceful symptom controlled death is an expected patient outcome and is not considered a medical crisis. A medical crisis would include, but not be limited to the following: uncontrolled terminal agitation as demonstrated by hallucinations, confusion, and combativeness; uncontrolled pain; uncontrolled respiratory distress; uncontrolled nausea and vomiting; hemorrhaging; uncontrolled seizures; family distress as a result of ongoing symptom management for the patient requiring administration of medications to maintain the patient's comfort; and, any uncontrolled symptom that requires the administration of medications with ongoing assessment of the effectiveness and adjustment of the medication regimen to achieve control of symptoms.

"Permanent license" means a license first issued to a hospice program after the first-year license period has been

completed and the required follow-up inspection has been conducted.

"Registered nurse" means a person who is currently licensed to practice registered nursing in the State of Oklahoma.

"Representative" or "Court appointed guardian" means a person who is authorized in accordance with State law to execute or revoke an election for hospice care or terminate medical care on behalf of the terminally ill individual.

"Skilled nurse" means a person who is currently licensed to practice registered nursing or practical nursing in the State of Oklahoma.

"Social worker" means a person who has a degree from a school accredited or approved by the Council on Social Work Education and conforms to the requirements of the State Licensure Laws of Oklahoma for Social Workers.

SUBCHAPTER 2. LICENSES

310:661-2-1. Licensure

(a) **Applicant.** Any public or private agency or person desiring to establish a hospice in Oklahoma shall apply for and obtain a license from the Department.

(b) **Application.** An application for a hospice license shall be filed on a form prescribed by the Department and shall be accompanied by the information required by the Act.

(c) **Plan of delivery.** The initial application shall be accompanied by a plan of delivery of home and inpatient hospice services to patients and their families. The plan shall include, but not be limited to, those items listed in the Act.

(d) **Expiration/renewal.** ~~The hospice license shall expire one (1) year from the date of issuance, unless suspended or revoked. An application for renewal shall be submitted according to the Act.~~

(1) **First-year license.**

(A) The first-year license shall expire one (1) year from the date of issuance unless suspended or revoked. A hospice holding a first-year license is required to successfully complete an initial inspection by representatives of the Department prior to the provision of services and shall be subject to a follow-up inspection after providing hospice services for at least six (6) months. The Department may require any hospice to renew the first-year license for one additional year. A hospice shall not hold a first-year license for more than twenty-four (24) months.

(B) A follow-up survey that demonstrates compliance with the Act and these rules shall be required prior to a hospice program being issued a permanent license.

(2) **Permanent license.** The permanent license shall expire one (1) year from the date of issuance, unless suspended or revoked. An application for renewal shall be submitted according to the Act. Only hospice programs in compliance with the Act and these rules shall be issued a permanent license.

(e) **Base of operation.** Every hospice providing hospice services shall operate from a place of business which is accessible to the public and physically located in Oklahoma. Staff providing services from the hospice shall be supervised by personnel at that location.

(f) **Eligibility for license.**

(1) A hospice making appropriate application that has been determined to be compliant with this Chapter and the Act is eligible for a license.

(2) A hospice may operate multiple administrative offices under one (1) license as long as the following requirements are met:

(A) The offices shall be located within a geographical area with a radius of no more than fifty (50) miles from the main hospice.

(B) The mileage limit used for approval of each administrative office shall be the mileage between town centers of the parent location town and the proposed administrative office location town as reported by the Oklahoma Department of Transportation as approximately the shortest route between town centers utilizing both State Highways System (free) and State Turnpike System (toll) roads.

(~~B~~C) The offices shall be operated under the same administration and governing body as an extension site for services of the main hospice.

(~~C~~D) These offices shall operate under the same name(s) as the licensee.

(g) **Compliance with Federal, State and local laws and regulations.** The hospice and its staff shall operate and furnish services that comply with all applicable Federal, State, and local laws and rules. The hospice shall ensure that staff comply with applicable State practice acts and rules in the provision of hospice services.

(h) **Hospice inpatient facility.**

(1) Each licensed hospice program may operate one (1) hospice inpatient facility with twelve (12) or fewer inpatient beds as long as the facility complies with hospice inpatient facility service requirements at OAC 310:661-6 and hospice inpatient facility physical plant requirements at OAC 310:661-8.

(2) A hospice inpatient facility may not be independently licensed as a hospice unless the hospice provides a full continuum of hospice program services to patients in their homes and temporary places of residence including the inpatient hospice facility.

310:661-2-2. Deadlines for applications

The license application shall be filed in accordance with the following deadlines.

(1) The application for ~~an initial~~ a first-year hospice license shall be filed at least thirty (30) days before beginning operations.

(2) The application for ~~an initial~~ a license, following a transfer of ownership or operation, shall be filed at least thirty (30) days prior to the transfer. If the Department finds that an emergency exists which threatens the welfare

of patients, the thirty (30) day advance filing notice may be waived.

(3) The application for renewal of an existing licensed hospice shall be filed at least sixty (60) days prior to the expiration date of the license.

(4) If a hospice is considering relocation, the hospice shall file an amended application with the address change at least thirty (30) days prior to the intended relocation. There shall be no fee for processing the license address change.

(5) Incomplete ~~initial~~ first-year license applications received by the Department shall be summarily dismissed after thirty (30) days of applicant notification of an incomplete application. Thereafter, the applicant shall be required to resubmit a new application and initial fee.

310:661-2-4. Transfer of ownership of a licensed hospice

(a) The license of a hospice shall not be subject to sale, assignment, or other transfer, voluntary or involuntary.

(b) If an entity is considering acquisition of a licensed hospice, an application for ~~initial~~ first-year license with an initial application fee of ~~two hundred fifty dollars ($250.00)~~ five hundred dollars ($500.00) and ~~an initial~~ a first-year license fee of ~~two hundred fifty dollars ($250.00)~~ one thousand five hundred dollars ($1500.00) shall be submitted to the Department at least thirty (30) days prior to the effective date of the change. A copy of the executed sales agreement shall be provided to the Department.

(c) The following actions shall not be considered a transfer of ownership or change in control requiring this subsection to apply:

(1) Change of a corporate or limited liability company licensee's name through amendments of the articles of incorporation or membership agreement.

(2) Sale of stock of a corporation.

(3) Sale or merger of a corporation that owns the hospice operating entity.

(4) Sale of membership interest of a limited liability company.

310:661-2-5. ~~Initial and renewal~~License application form

The applicant for ~~an initial or renewal~~ a license shall file the following application form: Application for License to Operate a Hospice (ODH Form 924). This form requests: amount of fee submitted; name of hospice; location and mailing address of hospice; name and title of chief executive officer; fiscal year ending date; operating entity name and address; type of operating entity; board of directors; complete disclosure of ownership including name, finding and mailing address, and percentage of ownership for every stockholder having at least five percent (5%) ownership in the hospice; name, signature, and title of position of persons making the application; and an affidavit attesting to the information provided.

310:661-2-6. Licensure fees

(a) An application for ~~an initial~~ a first-year license to establish or operate a hospice shall be accompanied by a non-refundable application fee of ~~two hundred fifty dollars ($250.00)~~ five hundred dollars ($500.00) and a non-refundable first-year license fee of ~~two hundred fifty dollars ($250.00)~~ one thousand five hundred dollars ($1500.00).

(b) An application for a permanent license to continue operation of a hospice after the first-year license period is complete shall be accompanied by a non-refundable permanent license fee of two thousand dollars ($2000.00).

(~~b~~c) A renewal application for an existing permanent hospice license shall be accompanied by a non-refundable license fee of five hundred dollars ($500.00).

(~~c~~d) A late renewal fee of fifty dollars ($50.00) shall be charged for any hospice submitting an application for renewal within thirty (30) days after the expiration date of the license.

[OAR Docket #06-1056; filed 5-23-06]

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

[OAR Docket #06-1057]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 7. Administration
310:675-7-9.1. [AMENDED]
Subchapter 9. Resident Care Services
310:675-9-1.1. [AMENDED]
310:675-9-5.1. [AMENDED]
Subchapter 13. Staff Requirements
310:675-13-5. [AMENDED]
Subchapter 15. Temporary Manager or Receiver
310:675-15-3.1. [NEW]
Subchapter 19. Feeding Assistants [NEW]
310:675-19-1. through 310:675-19-8. [NEW]

AUTHORITY:
Oklahoma State Board of Health; 63 O.S. 2001, Section 1-104; and 63 O.S. Supp. 2005, Section 1-1901 et seq., Section 1-1918B and Section 1-1951.

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Subchapter 9. Resident Care Services
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310:675-9-5.1. [AMENDED]
Subchapter 13. Staff Requirements
310:675-13-5. [AMENDED]
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23 Ok Reg 156
23 Ok Reg 557
Docket number:
#05-1287 and #06-39
INCORPORATIONS BY REFERENCE:
Incorporated standards:
42 Code of Federal Regulations Parts 483 and 488
American Dietetic Association. (2003). Eating Matters: A Training Manual for Feeding Assistants.
American Dietetic Association. (2003). Eating Matters: Feeding Assistants Manual.
American Health Care Association. (2003). Assisted Dining: The Role and Skills of Feeding Assistants.
Incorporating rules:
310:675-19-1
310:675-19-2
310:675-19-3
Availability:
The incorporated standards are available for viewing at the Oklahoma State Department of Health, Health Resources Development Service, Protective Health Services, 1000 N.E. 10 Street, Oklahoma City, OK 73117-1299 from 8:00 a.m. to 5:00 p.m.
ANALYSIS:
The proposed amendments in Subchapters 7 and 13 are intended to establish standards for assessing and documenting pain experienced by nursing facility residents. The amendments require facility policy and procedure manuals to address pain assessment and treatment. Requirements for nursing care are amended to establish a frequency for pain assessment, and to require record keeping. Provisions on resident assessments and care plans are amended to specify minimums for individualized pain assessment. Facility staff training requirements for pain recognition, pain screening and pain management are established. The amendments implement recommendations adopted on February 17, 2005 by the State Advisory Council on Pain Management, pursuant to Title 63 O.S. Sections 1-1918A and 1-1918B. The changes are needed to implement a July 1, 2005 requirement for nursing facilities to perform pain assessments.
A new section is added to Subchapter 15 establishing a fund for the Department to financially assist temporary managers of nursing facilities to ensure continuation of care of the residents when funds are not available from any other source. As a result of cross-references to Subchapter 15 in current law at Title 63 O.S. Section 1-840 and in current rule at OAC 310:680-3-13, the temporary manager fund provision will also apply to residential care homes and may be used for the benefit of residents of those homes. Subchapter 19 establishes standards for training and registration of feeding assistants in Oklahoma in accordance with Title 42 Code of Federal Regulations Parts 483 and 488. The rule will require a Feeding Assistant Registration Application form. The intent is to give nursing, specialized nursing, and skilled nursing facilities the option to use paid feeding assistants, allowing them to provide more residents with help in eating and drinking and reduce the incidence of unplanned weight loss and dehydration.
CONTACT PERSON:
Henry F. Hartsell Jr., Chief, Health Resources Development Service, Protective Health Services, 1000 N.E. 10 Street, Oklahoma City, OK 73117-1299; telephone: 405) 271-9444 ext. 57269; facisimile: 405-271-7360; email: hank@health.ok.gov

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 7. ADMINISTRATION

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

(a) The facility shall maintain written policies to govern the administration of the facility. These policies shall be reviewed annually and revised as necessary.
(b) The facility shall not admit any person unless it has the personnel and resources to provide all services and care prescribed for that person.
(c) All persons seeking admission shall be evaluated as to their medical, nursing and social needs. The scope of care and service to be provided by the facility, or through contract, shall be included in the resident care plan following admission.
(d) All residents shall have accommodations that are as close to their normal living arrangements as possible. Special care and arrangements shall be provided to ensure, if possible, that the accommodations support the resident's physical, mental and psycho-social needs in terms of sanitary environment, aesthetics and associations.
(e) Residents shall be accepted and cared for without discrimination on the basis of race, sex, color, religion, ancestry, disability, or national origin.
(f) Emergency care shall be provided to residents in case of sudden illness or accident, including persons to be contacted in case of an emergency.
(g) Conflict resolution procedures shall be adopted for processing complaints received from residents and employees.
(h) Job descriptions shall be developed that detail the functions of each classification of employee.
(i) Procedures shall be adopted for handling residents' funds and providing access to the written records regarding a resident's funds by the resident or representative.
(j) The facility has the following responsibilities concerning physicians:
(1) The health care services for each resident shall be under a physician's supervision.
(2) All physician orders shall be written in ink or indelible pencil and signed by the physician.
(3) No medication or treatment shall be administered except on a physician's order.
(4) The facility shall have a written policy that provides for physician services to be available twenty-four hours per day.
(5) A list of physicians shall be posted at the nursing station for use if the resident's attending physician is not available.
(6) The facility shall arrange for one, or more, physicians to be available in an emergency and to advise the facility. The physician called at the time of any emergency shall be noted in the records. If unable to contact a physician, the resident shall be transferred to a hospital emergency room.

(k) The facility shall adopt a nursing policy and procedure manual, which shall detail all nursing procedures performed within the facility. All procedures shall be in accordance with accepted nursing practice standards, and shall include, but not be limited to, the following:

(1) Ambulation, body alignment and positioning, and routine range of motion unless contraindicated by the resident's physician.

(2) Elimination, including a bowel and bladder training program, or frequent toileting for incontinent residents, when applicable.

(3) Colostomy and ileostomy care.

(4) Nutrition and meal service.

(5) Oral suctioning and tracheotomy care.

(6) Treatments.

(7) Nasogastric care.

(8) Oral hygiene.

(9) Isolation procedures.

(10) Universal precautions.

(11) Emergency procedures.

(12) Medication Administration.

(13) Pain assessment and treatment.

(l) Each nursing station shall have a copy of the nursing policy and procedure manual, isolation techniques, and emergency procedures for fire and natural disasters.

(m) The facility shall adopt policies and procedures for the administration of social services, activities, dietary, housekeeping, maintenance and personnel.

(n) The facility shall adopt a policy that any person working in the facility who shows signs or symptoms of a communicable disease, shall be excluded from work, and shall be permitted to return to work only after approval of the director of nursing or charge nurse.

(o) The facility shall adopt a procedure for taking inventory of and inconspicuously marking, for identification, the resident's personal effects (clothing and property) which shall be completed on admission of the resident and subsequently when new clothing or property is received by the resident. Identification marking shall be by a method that shall withstand repeated laundering or cleaning without loss of legibility. Jewelry, watches and similar articles of value shall not be subject to the marking requirement.

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

SUBCHAPTER 9. RESIDENT CARE SERVICES

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

(a) The facility shall ensure that resident rights are respected in the provision of care.

(b) Basic nursing and personal care shall be provided for residents as needed.

(1) Nursing care shall include, but not be limited to:

(A) Encouraging residents to be active and out of bed for reasonable time periods.

(B) ~~Weighing all residents and taking~~Measuring resident temperature, blood pressure, pulse and respirations at least once every thirty days ~~or as conditions warrant~~and more frequently if warranted by the resident's condition, with the results recorded in the clinical record.

(i) Measuring resident weight at least once every thirty days and more frequently if warranted by the resident's condition, with the results recorded in the clinical record.

(ii) Measuring resident pain whenever vital signs are taken and more frequently if warranted by the resident's condition, with the results recorded in the clinical record.

(C) Offering fluids, and making fluids available, to maintain proper hydration.

(D) Following proper nutritional practices for diets, enteral and parenteral feedings and assistance in eating.

(E) Providing proper skin care to prevent skin breakdown.

(F) Providing proper body alignment.

(G) Providing supportive devices to promote proper alignment and positioning.

(H) Turning bed residents every two hours or as needed, to prevent pressure areas, contractures, and decubitus.

(I) Performing range of motion exercises in accordance with individual assessment and care plans.

(J) Ensuring that residents positions are changed every two hours or as needed when in a chair and are toileted as needed.

(K) Establishing and implementing bowel and bladder programs to promote independence, or developing toileting schedules to promote continence.

(L) Performing catheter care with proper positioning of bag and tubing at all times.

(M) Recording accurate intake and output records for residents with tube feedings or catheters.

(N) Assessing the general mental and physical condition of the resident on admission.

(O) Updating the assessment and individual care plan when there is a significant change in the resident's physical, mental, or psychosocial functioning.

(P) Recognizing and recording signs and symptoms of illness or injury with action taken to treat the illness or injury, and the response to treatments and medications.

(2) Personal care shall include, but not be limited to:

(A) Keeping residents clean and free of odor.

(B) Keeping bed linens clean and dry.

(C) Keeping resident's personal clothing clean and neat.

(D) Ensuring that residents are dressed appropriately for activities in which they participate; bedfast/chairfast residents shall be appropriately dressed and provided adequate cover for comfort and privacy.

(E) Ensuring that the resident's hair is clean and groomed.

(F) Providing oral hygiene~~, including denture care, daily, and when necessary, and ensuring that oral care equipment and supplies are available~~ assistance at least twice daily with readily available dental floss, toothbrush and dentifrice. A denture cleaning/soaking device and brush shall be available and maintained for each resident as needed.

(G) Keeping toenails and fingernails clean and trimmed.

(c) The facility shall assist the resident in securing other services recommended by a physician such as, but not limited to, optometry or ophthalmology, audiology or otology, podiatry, laboratory, radiology or hospital services. The administration shall, through social services or other means, assist each resident desiring or needing medical related services.

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

(a) A resident assessment and an individual care plan shall be completed and implemented for each resident. The care plan shall indicate the resident's current status and accurately identify the resident's needs.

(b) The written resident assessment and care plan shall be reviewed and updated, at least quarterly, and as needed when the resident's condition indicates.

(c) Efforts shall be made to include the resident and resident's representative in development and implementation of the care planning process.

(1) **Resident assessment**

(A) The facility shall conduct, initially and periodically, a comprehensive, accurate, standardized, reproducible assessment for each resident's functional capacity.

(B) Each resident shall have an assessment coordinated or conducted by a registered nurse.

(C) Each individual completing a portion of the assessment shall sign, date, and certify the accuracy of that portion.

(D) An assessment shall be completed within fourteen days after admission of the resident.

(E) The resident assessment shall include a minimum data set (MDS) in the form required under 42 CFR 483.20. Each facility accurately shall complete the MDS for each resident in the facility, regardless of age, diagnosis, length of stay or payment category.

(F) The MDS form shall require the following, as applicable:

(i) Admission assessment;

(ii) Annual assessment;

(iii) Significant change in status assessment;

(iv) Significant correction of prior full assessment;

(v) Significant correction of prior quarterly assessment;

(vi) Quarterly review; and

(vii) A subset of items upon a resident's transfer, reentry, discharge, and death.

(2) **Resident pain assessment**

(A) Residents shall be screened for the presence of pain at least once every 30 days and whenever vital signs are taken.

(i) Licensed nursing staff shall perform the screening at least once every 30 days. Certified nurse aides may perform the screening more frequently as needed.

(ii) The screening instrument shall grade the intensity and severity of pain using a resident-specific pain scale;

(B) An individualized pain assessment shall be conducted by a registered nurse for each resident:

(i) In conjunction with the admission, quarterly and annual assessments required at OAC 310:675-9-5.1.(c)(1)(F); and

(ii) With onset of pain not previously addressed in a care plan or physician's orders.

(C) The goal is to alleviate or minimize pain while assisting the resident to maintain as high a level of functioning as possible. The pain assessment shall include, but not be limited to:

(i) A statement of how the resident describes the pain;

(ii) Intensity and severity of pain graded using a resident-specific pain scale;

(iii) Recent changes in pain;

(iv) Location(s);

(v) Onset and duration of pain, such as new pain within the last 3 days, recent pain within the last 3 months, or more distant pain greater than 3 months;

(vi) Type of pain reported or represented by resident, such as constant or intermittent, and duration or frequency of pain;

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

(viii) Aggravating and relieving factors;

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

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

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

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

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

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

(~~2~~3) **Individual care plan**

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

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

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

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

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

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

SUBCHAPTER 13. STAFF REQUIREMENTS

310:675-13-5. Nursing service

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

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

(c) **Director of nursing**

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

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

(3) When necessary, the director of nursing may work other than the day shift but for no more than three shifts a week. This exception shall not exceed three consecutive weeks in a three month period.

(d) **Licensed nurses**

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

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

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

(e) **Consultant registered nurse**

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

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

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

(f) **Certified medication aide**

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

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

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

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

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

(g) **Nurse aide**

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

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

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

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

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

(1) Fire safety and first aid classes semi-annually.

(2) Resident rights and resident adjustment to institutional life annually.

(3) Cardiopulmonary resuscitation and Heimlich maneuver procedures annually.

(4) All supervisory staff shall receive training in regards to applicable local, state, and federal regulations governing the facility.

(5) Each staff person shall be provided training in pain recognition at the time of orientation and at least once a year thereafter.

(6) Each certified nurse aide shall be provided training in pain screening at the time of orientation and at least once every six months thereafter.
(7) Each licensed practical nurse shall be provided training in pain screening and pain management at the time of orientation and at least once every six months thereafter.
(8) Each registered nurse shall be provided training in pain assessment and pain management at the time of orientation and at least once every six months thereafter.

SUBCHAPTER 15. TEMPORARY MANAGER OR RECEIVER

310:675-15-3.1. Advance of funds to temporary manager

(a) A temporary manager appointed by the Commissioner may request an advance of funds from the Department pursuant to 63 O.S. Supp. 2005 Section 1-1914.2(G) to assist in the continuation of care to facility residents if sufficient funds are not available from other sources. Continuation of care to facility residents may include closure of the facility and transfer of residents to another facility.
(b) The temporary manager shall submit the request for an advance of funds to the Department on the form described in (c) of this section. The request shall include a demonstration to the Commissioner's satisfaction that funds are needed but not available from sources including but not limited to:
(1) The facility's owner;
(2) Revenues due from residents and third-party payers, including Medicare and Medicaid revenues; and
(3) The facility's operating accounts.
(c) The application form for request of funds shall require the following:
(1) Documentation that the temporary manager has attempted to secure funds from other sources, including documentation showing that the temporary manager has made a funding request to the facility's owner;
(2) Projections of the funds needed to support the facility's operations based on information reasonably available to the temporary manager such as the facility's financial records and/or cost reports filed with third-party payers;
(3) An affidavit to be completed by the temporary manager if the owner fails to provide funds to the temporary manager as required by order of the Commissioner; and
(4) A statement to be signed under oath by the temporary manager that the information provided in the application is true and complete.
(d) Upon receipt of a completed application that demonstrates to the Commissioner's satisfaction the unavailability of sufficient funds from other sources, the Commissioner shall issue a written order with the following provisions:
(1) Direction to the facility owner to respond to the Department in writing and to make funds available to the temporary manager within 48 hours of issuance of the order;
(2) Notice to the facility owner that the owner's failure to provide sufficient funds shall result in action against the owner under the Nursing Home Care Act to suspend, revoke, and/or refuse to issue or renew the facility's license, and to impose an administrative penalty;
(3) Notice to the facility owner of the provision in 63 O.S. Supp. Section 1-1914.2(G) that such advances by the Department if not repaid in full shall constitute a lien against any and all assets of the owner; and
(4) Direction to the temporary manager to advise the Department immediately if funds are provided as required by the facility owner, and/or to submit to the Department the completed and sworn form confirming that funds were not provided to the temporary manager as ordered in (f)(1) of this section.
(e) If the Commissioner determines that the Department will advance funds to the temporary manager, the amount of funds advanced by the Department shall not exceed one month of projected operating expenses for the facility.
(f) The temporary manager shall notify the Department within 24 hours after a change in the information presented in the application, including changes in the operating budget or in the availability of funds from other sources.
(g) The advance of funds pursuant to this section is solely at the discretion of the Commissioner. The request may be denied for reasons including but not limited to the Commissioner's assessment that the Department does not have discretionary funds adequate to support the request, that other funding sources are available to the temporary manager, or that the funds are not needed to support operation of the facility. The temporary manager has no right to funds from the Department.

SUBCHAPTER 19. FEEDING ASSISTANTS

310:675-19-1. Purpose

This Subchapter establishes standards for training and registration of feeding assistants in Oklahoma in accordance with 42 Code of Federal Regulations Parts 483 and 488. The intent is to give nursing, specialized nursing, and skilled nursing facilities the option to use paid feeding assistants, allowing them to provide more residents with help in eating and drinking and reduce the incidence of unplanned weight loss and dehydration.

310:675-19-2. Definitions

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

"Feeding assistant" *means an individual who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization and meets the requirements cited in 42 CFR Parts 483 and 488* [63:1-1951(F)(1)].

310:675-19-3. Training course

(a) The following training curricula are approved as training courses and meet the requirements specified in 42 CFR 483.160(a):

(1) Eating Matters: A Training Manual for Feeding Assistants, published by the American Dietetic Association, 2003 edition; and Eating Matters: Feeding Assistants Manual, published by the American Dietetic Association, 2003 edition; or

(2) Assisted Dining: The Role and Skills of Feeding Assistants, published by the American Health Care Association, 2003 edition.

(b) A feeding assistant training course must consist of at least eight (8) hours of training in the required areas of instruction.

(c) A feeding assistant training course instructor must hold a current valid license as:

(1) A registered nurse;

(2) A licensed practical nurse;

(3) A registered dietitian;

(4) A speech-language pathologist or speech therapist; or

(5) An occupational therapist.

(d) Successful completion of a training course is based upon the instructor's assessment using a staff competency checklist that conforms to OAC 310:675-19-8.

(e) The training course must provide a certificate of completion within 30 days of course completion to each individual who successfully completed the course. The certificate shall conform to OAC 310:675-19-8.

(f) The Department will not restrict an individual from repeating a training course. The training course may establish limits on the number of times an individual may repeat the course after unsuccessful attempts.

310:675-19-4. Facility requirements

(a) The nursing facility, specialized nursing facility, or skilled nursing facility must maintain a record of each individual who has successfully completed the approved training course. For each individual feeding assistant employed by the facility, the facility must maintain:

(1) A copy of a staff competency checklist completed and signed by the instructor on the form specified in OAC 310:675-19-8;

(2) A copy of a certificate of completion signed by the instructor on the form specified in OAC 310:675-19-8;

(3) Verification that the facility checked with the Feeding Assistant Registry to ensure the individual is eligible for employment; and

(4) Verification of compliance with the Criminal History Background Check in 63 O.S. Supp. 2004, Section 1-1950.1.

(b) Each feeding assistant must work under the supervision of a registered nurse or licensed practical nurse. In an emergency, the feeding assistant must call a supervisory nurse for help using the resident call system if the nurse is not present during the feeding of a resident.

(c) The facility must ensure that a feeding assistant only assists residents who have no complicated feeding problems. The facility must base resident selection on the charge nurse's assessment and the resident's latest assessment and plan of care. Complicated feeding problems include but are not limited to:

(1) Difficulty swallowing;

(2) Recurrent lung aspirations; or

(3) Tube or parenteral/IV feedings.

(d) Instructor time shall not count toward minimum staffing requirements.

(e) The facility shall check the Feeding Assistant Registry before hiring a person to work as a feeding assistant. If the registry indicates that the individual has been found to be personally responsible for abuse, neglect, exploitation, or misappropriation of resident property, that individual shall not be hired by the facility.

(f) The facility must maintain proof of compliance with this subchapter at all times at the facility site.

310:675-19-5. Feeding assistant registry

The Department shall maintain a feeding assistant registry consistent with the registry operation described in OAC 310:677-5-2(c). The registry shall contain information consistent with that described in 63 O.S. Supp. 2004, Section 1-1951(D)(3).

310:675-19-6. Feeding assistant registration

(a) An individual may perform the services of a feeding assistant upon successful completion of an approved training course and shall submit a Feeding Assistant Registration Application to the Department on the form specified in 310:675-19-8.

(b) Each registered feeding assistant shall renew individual registration once every twenty-four (24) months. The individual shall submit a Feeding Assistant Renewal Application with proof that within the past twenty-four (24) months they have:

(1) Worked at least eight (8) hours for compensation as a feeding assistant; or

(2) Completed another eight (8) hour training course that complies with OAC 310:675-19-3.

310:675-19-7. Revocation, suspension and denial

(a) The State Health Department's procedure afforded a feeding assistant for purposes of investigating, hearing, and making findings on allegations of abuse, neglect, exploitation, or misappropriation of resident property, shall be not less than the process afforded nurse aides pursuant to Title 63 O.S. Supp. 2004 Section 1-1951(D)(4) through (12).

(b) A feeding assistant's registration may be revoked, suspended or denied if the Department determines with clear and convincing evidence that an individual has been responsible for any of the following:

(1) Abuse;

(2) Neglect;

(3) Exploitation; or

(4) Misappropriation of resident or client property.

310:675-19-8. Feeding assistant forms

The forms used for this subchapter are the following.

(1) **Staff competency checklist.** A training course using the curriculum specified in 310:675-19-3(a)(1)

may use the checklist provided with that curriculum or the checklist provided by the Department. Other training courses shall use the checklist provided by the Department. The competency checklist provided by the Department requires the following:

(A) The name of the person being trained;

(B) Evaluation of skills task performances including:

(i) Safety and emergency procedures including the Heimlich maneuver;

(ii) Sanitation and washing hands;

(iii) Serving a meal tray;

(iv) Assistance with resident requiring total feeding;

(v) Serving supplemental nourishments; and

(vi) Serving fresh drinking water;

(C) The date of the evaluation; and

(D) Name and signature of the instructor.

(2) **Certificate of completion.** A training course using the curriculum specified in 310:675-19-3(a)(1) may use the certificate of completion provided with that curriculum or the certificate provided by the Department. Other training courses shall use the certificate provided by the Department. The certificate of completion provided by the Department requires the following:

(A) Name of the person being trained;

(B) Name of the curriculum;

(C) Location where the training occurred;

(D) Date training was completed;

(E) A statement that the person successfully completed eight hours of training to become a feeding assistant; and

(F) Name and signature of the instructor.

(3) **Feeding assistant registration application.** The application form requires the following for each individual:

(A) Name;

(B) Date of birth;

(C) Contact information;

(D) Information sufficient to identify the individual including social security number;

(E) A copy of the certificate of completion from a training course that meets the requirements of OAC 310:675-19-3; and

(F) Applicant's signature affirming the truthfulness and completeness of the application.

(4) **Feeding assistant renewal application.** The application form requires the following for each individual:

(A) Name;

(B) Date of birth;

(C) Contact information;

(D) Information sufficient to identify the individual including social security number;

(E) Proof of work experience or retraining as required in OAC 310:675-19-6(c); and

(F) Applicant's signature affirming the truthfulness and completeness of the application.

[OAR Docket #06-1057; filed 5-23-06]

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

[OAR Docket #06-1058]

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PERMANENT final adoption
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Subchapter 13. Certified Medication Aides
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310:677-13-2. [AMENDED]
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310:677-13-4. [AMENDED]
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The amendments to Subchapter 13 establish competency and practice standards for medication aides, create a list of skills and functions that medication aides may perform, specify certification and recertification requirements for medication aides, provide criteria and procedures for approval of training programs, and establish procedures for administrative sanctions against certified medication aides. The amendments establish advanced training and certification requirements for administration of diabetic medications, and for administration of medications via nasogastric and gastrostomy routes, and administration of oral metered dose inhalers and nebulizers. The phrases "stable diabetes" and "unstable diabetes" are defined. Requirements for facility policies and procedures on certified medication aides are established. The amendments affect the administration of medications in nursing facilities, specialized nursing facilities including ICF/MR and Alzheimer's facilities, continuum of care facilities, assisted living centers, adult day care centers, and residential care homes.
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A) WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 13. CERTIFIED MEDICATION AIDES

310:677-13-1. General requirements

(a) An individual shall be able to read, write, and speak English and be certified in good standing as a home care aide, a long term ~~aide~~ care aide, or a developmentally disabled direct care aide listed in the Department's Nurse Aide Registry, prior to admission to a State approved certified medication aide training program.

(b) A certified medication aide shall complete at least eight (8) hours of continuing education every twelve (12) months, excluding the first year of certification, from a State approved program. A record of successful completion shall be kept in the certified medication aide's personnel file.

(c) An employer shall not use as a certified medication aide any individual who ~~has not completed the required continuing education and is not currently certified~~does not comply with 63 O.S. Section 1-1950.3(E), OAC 310:677, and the employer's policies and procedures.

(d) A certified medication aide shall renew ~~their~~ certification every 12 months. Recertification requires the following:

(1) Documentation of completion of at least eight (8) hours of continuing education within the previous twelve (12) months;

(2) Current certification as a long term care aide, home health aide ~~and~~or developmentally disabled direct care aide. CMAs may also be certified in the other two (2) categories in addition to the required certification as a long term care aide, home health care aide and developmentally disabled direct care ~~aides~~aide; and

(3) Current listing in the nurse aide registry.

(e) The Department shall ~~only~~ approve ~~non-employer based~~ certified medication aide training programs that meet the requirements of OAC 310:677-13-3 through 13-5, and 310:677-13-9.

(f) The Department shall review, approve or disapprove a Certified Medication Aide Continuing Education Program application and notify the entity of its action within thirty (30) days of the request or receipt of additional information from the ~~requester~~ applicant.

(g) The following words or terms when used in this subchapter shall have the following meaning unless the context clearly indicates otherwise:

(1) "Stable diabetes" means diabetes associated with a blood glucose level consistently between 80 and 140 milligrams per deciliter (mg/dl) fasting and less than or equal to 180 mg/dl after a meal, and/or a Hemoglobin A1c (HbA1c) at or below 7.0 within the last three months.

(2) "Unstable diabetes" means:

(A) A non-acutely ill person with blood glucose levels more than three times over a six week period that are under 80 mg/dl or more than 140 mg/dl fasting, or more than 180 mg/dl two hours after a meal;

(B) A person with diabetes who has prescriptions for both insulin and glucagon;

(C) A person with Type I diabetes who experiences hypoglycemia unawareness;

(D) A person who is newly diagnosed with diabetes and for whom insulin is prescribed; or

(E) A person who has been previously diagnosed with diabetes and now requires insulin administration for management. They may be considered stable again when their glucose is maintained in the stable range specified in subsection (g)(1) of this section, which may include maintaining an HbA1c at or below 7.0.

(3) "Newly diagnosed" means a person who now has a diagnosis of either Type I or Type II diabetes, has a new prescription for insulin, has not been diagnosed with diabetes in the past and who does not have stable diabetes.

310:677-13-2. Deemed to meet state certification requirements

~~The Department shall recognize as eligible a~~A certified medication aide shall be eligible to perform the duties of a certified medication aide for the following employers:

(1) ~~Long term care facility.~~ Nursing facility or continuum of care facility;

(2) ~~Facility for the developmentally disabled.~~Specialized facility;

(3) Residential care home~~.~~;

(4) Adult day care facility~~.~~; and

(5) Assisted living center.

310:677-13-3. Instructor qualifications

(a) ~~The instructor for an approved training program for certified medication aides shall be a licensed nurse, or a registered pharmacist, whose qualifications are approved by the Department, and who has at least (1) one year experience in their field of expertise.~~Each training program instructor shall be qualified as a physician, licensed nurse, pharmacist, respiratory therapist, speech therapist, or certified diabetes educator who may teach within her or his area of expertise or scope of practice. Each instructor shall have one year of experience in her or his area of expertise. The program shall designate a registered nurse as the training program supervisor if a licensed practical nurse serves as an instructor.

(b) Other personnel from the health professions may supplement the instructor as required by the curriculum and approved by the Department.

310:677-13-4. Curriculum

(a) The certified medication aide training program shall include~~:~~

~~(1)~~ ~~At least~~ a minimum of forty (40) hours of combined classroom and ~~clinical~~supervised practical training~~.~~

~~(2)~~ ~~At least~~ with a minimum of sixteen (16) hours of supervised practical training.

(b) The certified medication aide training shall include, but is not limited to each of the following subject areas:

(1) Preparation and administration of medication.

(A) Documentation of medication administration.

(B) Proper medication storage procedures.

(i) Scheduled controlled substances.

(ii) Internal and external medications.

(C) Purposes of medications.

(D) Oral medications.

(E) Topical medications.

(F) Eye, ear, and nose medications.

(G) Vaginal medications.

(H) Rectal medications.

(I) Oral inhalants.

(J) Transdermal medications.

(K) Medical terminology, symbols, and abbreviations.

(L) The ~~five~~ rights of medication administration, including the right patient, drug, date, time, dosage, route and form.

(M) Controlled drug procedures.

(N) ~~Recognize~~Recognizing appropriate situations requiring assistance of the charge nurse.

(O) Drug-reference sources.

(P) Vital sign measurement with drug administration.

(Q) Medication labeling.

(2) Observe, report, and document resident's status.

(A) Blood pressure measurement and documentation.

(B) Drug to drug interactions.

(C) Drug to food interactions, and medication timed to coincide with meals.

(3) Principles of safety.

(A) Infection control techniques.

(B) Principles of positioning for medication administration.

(4) Knowledge of measurement systems.

(A) Distinguish weight and volume measurements.

(B) Decimal and fraction concepts in medication administration.

(C) Appropriate measurement equipment.

(5) Body systems and common diseases.

(A) Digestive system and common diseases to medication administration.

(B) Respiratory system and common diseases to medication administration.

(C) Drug metabolism.

(D) Cardiovascular system and common diseases to medication administration.

(E) Endocrine system in relation to diabetes and hormone therapy.

(F) Elimination system and common diseases to medication administration.

(G) Skin system and common diseases to medication administration.

(H) Muscular-skeletal system and common diseases to medication administration.

(I) Nervous system and common diseases to medication administration.

(c) The advanced training program for care of diabetes and the administration of diabetic medications by CMAs shall include:

(1) A minimum of twelve hours of classroom training and a minimum of four hours of supervised practical training;

(2) Training in the following subject areas with curriculum standards as indicated:

(A) Pathophysiology of diabetes, with the successful learner able to:

(i) Define diabetes as a chronic metabolic disorder in which the body is unable to metabolize glucose properly;

(ii) Describe the action of insulin in the body; and

(iii) Explain the differences between the types of diabetes;

(B) Diabetes disease management, with the successful learner able to:

(i) Describe the relationship between insulin, diet, and physical activity in management of diabetes; and

(ii) Explain how diet relates to blood glucose control;

(C) Blood glucose testing and use of equipment, with the successful learner able to:

(i) Explain the purpose of blood glucose testing;

(ii) Demonstrate how to use blood glucose testing equipment, and demonstrate accuracy with a minimum of 10 tests per type of testing glucometer used in the training program; and

(iii) Explain the quality control requirements for glucose monitoring equipment, demonstrate both high and low controls, and explain their purpose and frequency of control testing;

(D) Stable and unstable diabetes, with the successful learner able to:

(i) Identify appropriate blood glucose levels for persons with diabetes;

(ii) Define hypoglycemia and list three causes and three symptoms;

(iii) Define hyperglycemia and list three causes and three symptoms; and

(iv) Define and describe the difference between stable and unstable diabetes;

(E) Diabetes care by managing blood glucose levels, with the successful learner able to:

(i) List three carbohydrate choices used to treat hypoglycemia;

(ii) Describe measures to prevent hypoglycemia;

(iii) Describe the relationship between blood glucose levels and indications for glucagon use;

(iv) Describe measures to prevent hyperglycemia; and

(v) State when to contact and what to report to a licensed health care provider;

(F) Charting, graphing, and record-keeping, with the successful learner able to:

(i) Explain the reason for accurate documentation of all aspects of diabetes management and care, including blood glucose results, quality control testing, medication administration, and adverse reactions;

(ii) Identify correct forms for documentation; and

(iii) Demonstrate the ability to accurately document diabetes management and care;

(G) Diabetic medications and adverse reactions (Insulin), with the successful learner able to:

(i) Describe the purpose of insulin;

(ii) State the types of insulin and each onset, peak and duration of action;

(iii) Explain the difference between basal and bolus insulin; and

(iv) State common side effects, adverse reactions and precautions for insulins;

(H) Diabetic medications and adverse reactions (Oral agents), with the successful learner able to:

(i) Describe the purpose, action and recommended doses of each oral agent; and

(ii) State common side effects, adverse reactions and precautions for each oral agent;

(I) Administration of diabetic medications, with the successful learner able to:

(i) State the correct administration times for insulin and oral agents relevant to meals and mechanisms of action;

(ii) Identify the preferred sites for an insulin injection and describe site rotation patterns;

(iii) Discuss the proper storage of insulin;

(iv) Demonstrate in a minimum of ten tests each the accurate measurement and correct technique for preparation of a single and a mixed dose of insulin;

(v) Explain why it is required to check insulin type and dose drawn with another certified medication aide or licensed health care provider; and

(vi) Demonstrate administration of a dose of insulin (or saline) to self or another person;

(J) Infection control and universal precautions for blood borne pathogens, with the successful learner able to:

(i) Define the term "universal precautions";

(ii) Demonstrate safe handling of syringes, needles, pen devices, glucometer equipment and test strips, lancing devices and lancets; and

(iii) Explain proper disposal of used syringes, needles, test strips and lancets; and

(3) Return demonstrations of skill with a proficiency of 100% and didactic testing measuring curriculum knowledge at 90% or greater.

(d) The advanced training program for administration of medications and nutrition via nasogastric and gastrostomy tubes, and for administration of oral metered dose inhalers and nebulizers, shall include:

(1) A combined minimum of 6 hours of classroom and supervised practical training;

(2) Training in at least the following subject areas:

(A) Gastrointestinal system and alternative methods for providing medications and nourishment;

(B) Nasogastric and gastrostomy equipment and supplies;

(C) Procedures and techniques for insertion of nasogastric tube by a licensed nurse, and assessment of patient by registered nurse after placement of nasogastric or gastrostomy tube and before administration of medication or feedings;

(D) Methods and techniques for administration of medications and nutrition via nasogastric and gastrostomy tubes; and

(E) Identification of and responses to potential problems associated with administration of medications and nutrition via nasogastric and gastrostomy tubes.

(F) Respiratory system and methods for delivery of medications;

(G) Equipment and supplies for administration of medication via metered dose inhalers and nebulizers;

(H) Methods and techniques for administering medications via metered dose inhalers and nebulizers; and

(I) Identification of and responses to potential problems associated with administration of medications via metered dose inhalers and nebulizers; and

(3) Return demonstrations of skill with a proficiency of 100% and didactic testing measuring curriculum knowledge at 90% or greater.

310:677-13-5. Competency and skills examination

(a) The following shall apply to the written competency examination ~~shall:~~.

(1) ~~Be~~The examination shall be drawn from a pool of test questions that address the course requirements.

(2) ~~Be~~The examination shall be administered and scored by a Department approved entity.

(3) The examination shall comply with the examination administration requirements in OAC 310:677-3-9.

(4) A minimum score of seventy percent (70%) shall be required to pass the written competency examination for certification as a medication aide.

(5) A minimum score of eighty percent (80%) shall be required to pass the written competency examination for insulin administration.

(6) A candidate who fails to score at least the required minimum on three consecutive written competency examinations shall be required to retrain before retesting.

(b) The following shall apply to the skills demonstration ~~shall:~~.

(1) ~~Be~~The skills demonstration shall be performed in a laboratory or a site comparable to the setting in which the certified medication aide will function.

(2) ~~Be~~The skills demonstration shall be administered and scored by a physician, licensed nurse or registered pharmacist.

(3) The student shall achieve one hundred (100) percent accuracy on a medication pass on at least twenty (20) or more individuals under direct observation by an instructor.

(4) ~~The medication pass may be performed in a facility.~~

~~(5)~~ The successful completion of the medication pass shall be documented and retained in the certified medication aide's training file.

(5) The skills demonstration shall comply with the administration requirements in OAC 310:677-3-9 and the content requirements in OAC 310:677-3-10.

310:677-13-6. Competency and practice standards

(a) Each certified medication aide must function under the supervision of a licensed nurse or physician.

(b) Each certified medication aide shall:

(1) Comply with 63 O.S. Section 1-1950.3(E) and OAC 310:677-13;

(2) Perform within authorized duties;

(3) Follow written instructions of a licensed nurse or physician; and

(4) Accurately record medications administered, withheld or refused.

(c) Each certified medication aide shall demonstrate understanding of the CMA's relationship to licensed nurses and physicians, including:

(1) The authority of physicians, physician assistants and advanced practice nurses to order medications and treatments;

(2) The authority of registered nurses to perform assessments and report to physicians;

(3) The authority of licensed practical nurses to perform focused reviews and report to registered nurses and physicians; and

(4) The functions of the certified medication aide authorized in 63 O.S. Section 1-1950.3(E) and OAC 310:677-13-7.

(d) Each certified medication aide shall:

(1) Pass written and clinical skills tests prior to performing as a certified medication aide; and

(2) Demonstrate competency and complete required continuing education that is relevant to the services being provided by the certified medication aide.

310:677-13-7. Skills and functions

(a) Task assignments. Approved training programs and facilities, centers and homes shall ensure that a task selected, taught and assigned to certified medication aides conforms to 63 O.S. Section 1-1950.3 and OAC 310:677-13.

(b) Limitations. A certified medication aide shall not:

(1) Administer medication that requires assessment unless a registered nurse is available to perform the assessment within the required time;

(2) Perform oral, nasal or tracheal suctioning;

(3) Apply topical wound care medications that involve decubitus treatment ordered by the attending physician;

(4) Act as preceptor for a medication aide in training;

(5) Administer PRN medication without a documented assessment unless authorization is obtained from a licensed nurse on duty or on call, and unless fully documented by the certified medication aide;

(6) Perform blood glucose testing unless the CMA has completed a Department-approved advanced training program and has demonstrated competency for care of diabetes;

(7) Administer insulin unless the CMA has successfully completed a Department-approved advanced training program and competency and skills examination, and unless a physician or licensed nurse is on-site if the individual:

(A) Is newly diagnosed with diabetes;

(B) Requires insulin administration based on blood glucose levels and does not have clear physician orders for variable or sliding scale insulin; or

(C) Has unstable diabetes; or

(8) Administer medications or nutrition via nasogastric or gastrostomy tubes, or administer oral metered dose inhalers or nebulizers, unless the CMA has completed a Department-approved advanced training program and has demonstrated competency for such services; or

(9) Take or note physician orders.

(c) Skills review. The facility, center or home shall validate certified medication aide skills before the certified medication

aide performs medication administration. The certified medication aides' skills shall be reviewed annually for performance competency.

(d) Functions. The functions of the certified medication aide are:

(1) Knowing the resident, including:

(A) Reviewing the resident's plan of care; and

(B) Recognizing normal and abnormal conditions for the specific resident;

(2) Collection and documentation of data;

(3) Identifying a change in condition;

(4) Reporting to the licensed nurse and/or physician;

(5) Contacting emergency medical services;

(6) Receiving facility-specific training and orientation from the facility's licensed nurse;

(7) Demonstrating competency and proficiency to the facility's licensed nurse; and

(8) Receiving delegated tasks from the facility licensed nurse, and performing based upon such delegation.

310:677-13-8. Certification and recertification

(a) Effective August 1, 2006, the following, to be evidenced by the aide's attestation, are prerequisites for certification as a medication aide:

(1) Minimum age: 18;

(2) Minimum education: high school or general equivalency diploma;

(3) Current Oklahoma nurse aide certification with no abuse notations;

(4) Experience working as a certified nurse aide for six months; and

(5) Physical and mental capability to safely perform duties.

(b) Application criteria and processing requirements are as follows:

(1) The certified medication aide submits proof of work experience and continuing education for recertification; and

(2) The medication aide may be required to retest if certification has expired by more than one year, and to retrain if the medication aide fails the retest or if certification has expired by more than three years.

(c) A certified medication aide who completes a Department-approved advanced training program and demonstrates competence may request a Department-issued certificate that bears an endorsement for the advanced training. When an advanced-training certificate is issued by the Department to a certified medication aide, a notation reflecting the advanced training shall be placed on the aide's record in the Nurse Aide Registry. The request shall be accompanied by the $5.00 certification fee required in OAC 310:677-5-2(e) and proof of training and competence on an application form that requires:

(1) The name and contact information for the certified medication aide; and

(2) The name of the training program, dates of attendance, details on the CMA's demonstration of competence, and copies of documents from the program confirming training and competence.

310:677-13-9. Training and Competency Evaluation Programs

(a) Department approval of the training and competency evaluation program is required prior to offering training.

(b) The program must submit information on a form provided by the Department to include:

(1) Instructor names and qualifications;

(2) Classroom and clinical facilities;

(3) Program outline, with objectives, curriculum, and instruction methods, and demonstration that the program addresses skills and functions specified in OAC 310:677-13-7; and

(4) Evaluation methods, including lab and clinical skills checklists, and examinations.

(c) Department approved training programs shall be evaluated every three years. Between evaluations, the training program shall send the Department advance notice of changes in previously approved program information.

(d) Each program is subject to site visits by the Department.

(e) Within 30 days after receipt of an application for a program that is not currently approved, the Department shall determine if the application is complete and consistent. If the application is incomplete or inconsistent, the Department shall advise the applicant in writing and offer an opportunity to submit additional information. Within 30 days after completeness, the Department shall approve or disapprove the application. If the action is to disapprove, the Department shall advise the applicant in writing of the specific reasons for the disapproval, and offer an opportunity to demonstrate compliance.

(f) The Department may withdraw approval or refuse to renew approval of a training program based on the program's noncompliance with 63 O.S. Section 1-1950.3 or 1-1951, or OAC 310:677. The Department shall notify the program of the intent to withdraw or not renew approval. The notice shall cite the specific reasons for the action and offer the applicant an opportunity to demonstrate compliance. Prior to the effectiveness of the withdrawal or non-renewal, the Department shall offer the program an opportunity for a hearing. After the withdrawal or non-renewal, the Department may oversee orderly closure of a program.

(g) Training modules in addition to the minimums for certified medication aide training shall be submitted for Department approval as training programs prior to offering training.

(h) For advanced training programs for care of diabetes, the Department shall deem as acceptable the use of training materials approved by the American Diabetes Educators Association, Oklahoma Chapters.

310:677-13-10. Denial, suspension, withdrawal, and nonrenewal of certification

(a) Grounds for certification action against a certified medication aide may include:

(1) Intentionally providing false or misleading information to a training program, a facility, or the Department;

(2) Failing to administer medications as ordered by a health care professional, with resulting actual harm that is either life threatening or has a negative outcome for the resident;

(3) Failing to consistently document medications;
(4) Altering or falsifying medication records;
(5) Altering or falsifying certified nurse aide or certified medication aide identification cards;
(6) Diverting drugs;
(7) Practicing nursing or medicine except as authorized pursuant to 63 O.S. Section 1-1950.3, 1-1951, OAC 310:677, and Oklahoma laws and rules specific to the CMA's employer as specified in OAC 310:677-13-2;
(8) Representing oneself as certified medication aide without current certification;
(9) Administering medications in a setting other than those authorized in 63 O.S. Section 1-1950.3(E); or
(10) Materially failing to conform to 63 O.S. Section 1-1950.3(E) and OAC 310:677-13.

(b) The Department may deny, suspend, withdraw or not renew certification of a medication aide based on the aide's noncompliance with 63 O.S. Section 1-1950.3 or 1-1951, or OAC 310:677. The Department shall notify the aide of the intent to deny, suspend, withdraw or not renew certification. The notice shall cite the specific reasons for the action and offer the aide an opportunity to demonstrate compliance. Prior to the effectiveness of the denial, suspension, withdrawal, or nonrenewal of certification, the Department shall offer the aide an opportunity for a hearing.

(c) The suspension of a certificate shall be effective for not less than six months, and a denial, withdrawal or nonrenewal of a certification shall be effective for not less than one year. The Department shall specify the duration of the denial, suspension, withdrawal or nonrenewal of certification in excess of the minimums based on the seriousness of the underlying violation and the likelihood that the aide will maintain compliance in the future.

310:677-13-11. Facility policies and procedures

(a) If a facility uses certified medication aides, facility policies and procedures shall address:
(1) Methods that the facility, center or home uses to ensure that training, skill validation, and task assignment procedures are approved and implemented;
(2) Licensed supervision, oversight and availability;
(3) Staff intervention during an emergency;
(4) Procedures for responding when a resident experiences a change in condition, demonstrates side effects or does not respond to the medication regimen as identified in the plan of care;
(5) Documentation that must be maintained;
(6) Reporting errors to licensed nurses and/or physicians; and
(7) Reporting violations of 63 O.S. Section 1-1950.3(E) and OAC 310:677 to the State Health Department.

(b) If a facility uses certified medication aides that have completed an advanced training program and demonstrated competency for care of diabetes or other specialized training modules, the facility policies and procedures shall address subsection (a) of this section and:
(1) Standards for monitoring and assessments of residents by a registered nurse or physician, including:
(A) Frequency of monitoring and assessment;
(B) Distinguishing between Type I and Type II diabetes, and stable and unstable diabetes;
(2) Validating CMA skills before the CMA performs medication administration, and annual reviews of CMA performance competency and proficiency by the facility nurse;
(3) Procedures for blood sugar testing;
(4) Collecting data;
(5) Charting, graphing and recording data;
(6) Standards for reporting to the licensed nurse or physician on a timely basis, including:
(A) Recognition of abnormal resident reactions;
(B) Contact procedures, on-call hours, and response times; and
(C) Medication administration errors, including the wrong patient, drug, date, time, dosage, route or form;
(7) Contacting emergency medical services;
(8) Training, orientation and delegation of tasks from the facility's nurse;
(9) Drawing up insulin;
(10) Following physician orders, including use of sliding scale orders prescribed by physicians;
(11) Safety and infection control; and
(12) Minimum qualifications for CMAs and facility screening of applicants, to include assurance that each certified medication aide has the physical and mental capability to safely perform duties.

[OAR Docket #06-1058; filed 5-23-06]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #06-1003]

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Subchapter 3. Formal and Informal Procedures
317:1-3-5. [REVOKED]
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317:1-9-7. through 317:1-9-8. [REVOKED]
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Agency appeal rules are being revised to accurately reflect the agency which will hear various employer and employee eligibility appeals for the Oklahoma Employer and Employee Partnership for Insurance Coverage (O-EPIC) Program. Rules regarding the various appeal processes are relocated to individual sections to help clarify the correct procedures to be followed. In addition, rules are amended to correct various rule citations. Revisions are needed to provide appeal guidelines for the O-EPIC program and clarify appeal procedures Further revisions bring rules in line with other Sections of rules.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. FORMAL AND INFORMAL PROCEDURES

317:1-3-5. General complaints [REVOKED]

~~(a) Anyone may complain to the Authority about any matter under its authority. A complaint shall be in writing, and it shall include the following information:~~

~~(1) The name, address and telephone number of the person making the complaint;~~

~~(2) The name, address and telephone number of the organization the person represents, if applicable;~~

~~(3) The name, address, telephone number and title of any representative of the person filing the complaint;~~

~~(4) A brief, clear description of each charge, problem or issue that is the basis for the complaint including names, dates, places and actions;~~

~~(5) The numbers and headings of the laws and rules that may apply;~~

~~(6) The remedy, if any, the person making the complaint seeks;~~

~~(7) The signature of the person making the complaint; and~~

~~(8) The date.~~

~~(b) If the complaint is repetitive, concerns a matter that has already been resolved, or a matter outside the Authority's authority, the Authority may reject the complaint.~~

~~(c) The Authority may provide others with written notice of the complaint and give them an opportunity to respond in writing within 15 days. The response must contain all of the following information:~~

~~(1) The name, address, and telephone number of the person responding;~~

~~(2) The name, address, and telephone number of the organization the person represents, if applicable;~~

~~(3) The name, address, telephone number and title of any representative of the person responding.~~

~~(4) A specific admission, denial or explanation of each charge;~~

~~(5) A brief, clear description of the facts including names, dates, places and actions;~~

~~(6) A brief, clear explanation of the reasons for the action (or inaction) that is the basis for the complaint if the person admits to any charge;~~

~~(7) The numbers and headings of the laws and rules that may apply;~~

~~(8) The signature of the person responding; and~~

~~(9) The date.~~

~~(d) The Authority or the Administrator may refer complaints to informal proceedings in cases where all parties agree to informal procedures or in instances involving standard procedures uniformly applied, and which involve no discretion on the part of the Authority or a Health Plan. Telephone calls, letters, meeting, mediation, investigations or other appropriate procedures may be utilized as a part of the process. Provided that, the Authority may make a determination to allow a client to disenroll for cause from a Health Plan in an informal proceeding without agreement of the Health Plan.~~

~~(e) The Authority shall make a decision about a complaint within 60 days after its receipt, unless the Authority needs more time. Provided that, in a case on appeal by a client from an adverse determination in an informal proceeding involving a request to disenroll from a Health Plan for cause, the Authority shall make a decision within 20 days after receipt. In that case, the Administrator shall notify the person filing the complaint and persons filing any responses to the complaint.~~

SUBCHAPTER 7. COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT OF 1990

317:1-7-6. Requests for reasonable accommodation

(a) An employee who wishes to file a request for reasonable accommodation should do so through a supervisor who will secure the proper forms from the ~~Personnel Department~~ Human Resources Division. An employee who disagrees with the proposed resolution to the request should contact his or her supervisor and mechanisms for resolving the dispute will be instituted through the ~~Personnel Department~~ Human Resources Division. All steps in the process should be documented completely by involved personnel. All requests and records related to the request will be maintained in an appropriate manner by the ~~Personnel~~ Human Resources Division. If there is a dispute between the Oklahoma Health Care Authority and an employee regarding reasonable accommodation, the employee may file a complaint with any state or federal agency which has jurisdiction over ADA complaints.

(b) A client requesting reasonable accommodation should be directed to the Office of the ~~Chief Executive Officer~~ General Counsel, Oklahoma Health Care Authority, Suite 124, 4545 N. Lincoln Blvd., Oklahoma City, OK, 73105, or such address in the future which is the official mailing address of the Authority. ~~The Chief Executive Officer or a designated Director subject to OAC 317:1-7-7 will attempt to comply with the request and will notify the client of the resolution. If there is a dispute between the Authority and an employee regarding reasonable accommodation, the employee may file a complaint with any state or federal agency which has jurisdiction over ADA complaints. The employee may also file for an administrative hearing with OHCA under OAC 317:2-1-2(b)(5) or file a complaint with the Personnel Department.~~ The General Counsel will confer with the appropriate Director regarding the client's request for accommodation and notify the client of the resolution.

317:1-7-6.1. Requests to make services accessible

In the case a client or applicant for OHCA is denied a request to OHCA to make services more accessible under the Americans with Disabilities Act, the client may appeal the denial to an OHCA Administrative Law Judge under OAC ~~317:2-1-2(b)(5)~~ 317:2-1-2(c)(1)(A) or may appeal to the Department of Health and Human Services under 28 C.F.R. §35.190(3) or may seek any other remedy provided under law.

SUBCHAPTER 9. CIVIL RIGHTS AND NONDISCRIMINATION

317:1-9-7. Dissemination of rules [REVOKED]

~~The Authority will inform all employees, clients, applicants and the general public that all services, and all other benefits under its programs are provided on a nondiscriminatory basis. The methods of disseminating policy include the following:~~

~~(1) Written notice on all application and admission forms;~~

~~(2) A nondiscrimination statement in all invoices, financial ransaction forms contracts and agreements, business ommunications, and other related documentation;~~

~~(3) A statement in all brochures and pamphlets which are distributed to beneficiaries, applicants, and the public on the Authority's policy of nondiscrimination;~~

~~(4) Official posters for distribution to vendor recipients to be placed in prominent public places;~~

~~(5) Information to the general public on its right to file complaints,and of the address of the Authority to which complaints may be sent;~~

~~(6) In areas where there are significant number of non-English speaking minorities, the Authority will communicate its policy, including complaint rights, in the appropriate languages;~~

~~(7) For persons with impaired sensory, manual, or speaking skills, the Authority will provide special assistance or, when appropriate, auxiliary aids to afford such persons and equal opportunity to learn of its policies or to benefit from its programs or services.~~

317:1-9-8. Execution of compliance reviews [REVOKED]

~~The Authority will make periodic compliance reviews to ensure that practices being utilized conform with Title VI, its regulations and Section 504 of the Rehabilitation Act of 1973 and its regulations. These reviews will elicit information which will provide facts related to:~~

~~(1) desegregation of physical facilities and the accessibility of facilities to handicapped persons;~~

~~(2) availability of notices to clients, potential clients, and the public concerning the facility's policy of compliance;~~

~~(3) extent of participation in programs by minorities and handicapped persons;~~

~~(4) procedures for the delivery of services;~~

~~(5) uniform use of courtesy titles;~~

~~(6) utilization of minority groups and handicapped persons as staff members;~~

~~(7) referral practices;~~

~~(8) employment practices as they relate to the delivery of services; and~~

~~(9) the bilingual cultural capability of the staff for delivering services.~~

[OAR Docket #06-1003; filed 5-22-06]

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

[OAR Docket #06-1004]

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ANALYSIS:
Agency appeal rules are being revised to accurately reflect the agency which will hear various employer and employee eligibility appeals for the Oklahoma Employer and Employee Partnership for Insurance Coverage (O-EPIC) Program. Rules regarding the various appeal processes are relocated to individual sections to help clarify the correct procedures to be followed. In addition, rules are amended to correct various rule citations. Revisions are needed to provide appeal guidelines for the O-EPIC program and clarify appeal procedures Further revisions bring rules in line with other Sections of rules.

CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

317:2-1-1. Purpose

The purpose of this Chapter is to describe the different types of grievances addressed by the Oklahoma Health Care Authority (OHCA). The rules explain the step by step processes that must be followed by a party seeking redress from the ~~Authority~~ OHCA. All hearings on eligibility issues for recipients are conducted by the Oklahoma Department of Human Services, and are not contained in this Chapter. Hearings will not be granted when the sole issue to be determined is a Federal or State law requiring an automatic change adversely affecting some or all recipients.

317:2-1-2. ~~Grievance hearings~~ Appeals

(a) ~~Overview~~ **Recipient process overview.**

(1) The ~~grievance procedure~~ appeals process allows a recipient to appeal a decision which adversely affects their rights. Examples are decisions involving medical services, prior authorizations for medical services, or discrimination complaints. ~~Appealable reviews are listed at Section 317:2-1-2(b).~~

(2) In order to file an appeal, the recipient files a LD-1 form within 20 days of the triggering event. The triggering event occurs at the time when the Appellant (Appellant is the person who files a grievance) knew or should have known of such condition or circumstance for appeal).

(3) If the LD-1 form is not received within 20 days of the triggering event, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely. In the case of tax warrant intercept appeals, if the LD-1 form is not received within 30 days of written notice sent by OHCA according to Title 68 O.S. § 205.2, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely.

(4) If the LD-1 form is not completely filled out and necessary documentation not included, then the appeal will not be heard.

(5) The staff advises the Appellant that if there is a need for assistance in reading or completing the grievance form that arrangements will be made.

(6) Recipient appeals are first reviewed by a three person program panel that may or may not contact the recipient [Section OAC ~~317:2-1-2.2(a)~~ 317:2-1-5]. The recipient ~~appeal next goes to~~ may then request a fair hearing before the ALJ. The recipient must appear at this hearing and it is conducted according to Section OAC ~~317:2-1-2(c)~~ 317:2-1-5. The ~~recipient~~ ALJ's decision may ~~then~~ be ~~appeal~~ appealed to the CEO, which is a record review at which the ~~recipient~~ parties ~~does~~ do not appear (Section OAC ~~317:2-1-4~~ 317:2-1-13). ~~Provider appeals generally go to the ALJ (see Section OAC 317:2-1-2.1) and generally follow the procedure at OAC 317:2-1-2(c).~~

(7) Recipient appeals are to be decided within 90 days from the date OHCA receives the recipient's timely request for a fair hearing of the program panel's decision unless the recipient waives this requirement. [Title 42 U.S.C. Section 431.244(f)]

(8) Tax warrant intercept appeals will be heard directly by the ALJ. A decision will be rendered by the ALJ within 20 days of the hearing before the ALJ.

(b) ~~Receipt of grievances~~ **Provider process overview.**

(1) The proceedings as described in this Section contain the hearing process for those appeals filed by providers. These appeals encompass all subject matter cases contained in OAC 317:2-1-2(c)(2).

(2) All provider appeals are initially heard by the OHCA Administrative Law Judge under OAC 317:2-1-2(c)(2).

(A) The Appellant (Appellant is the ~~person or~~ provider who files a grievance) ~~shall file~~ files an LD form requesting a grievance hearing within 20 days of the triggering event. The triggering event occurs at the time when the Appellant knew or should have known of such condition or circumstance for appeal. (~~LD-1 forms are for recipient complaints,~~ LD-2 forms are for provider grievances and LD-3 forms are for nursing home wage enhancement grievances.) ~~In the case of tax warrant intercept appeals, the Appellant shall file a LD form requesting a grievance hearing within 30 days of written notice sent by the OHCA according to Title 68, Oklahoma Statutes, Section 205.2.~~

(~~2~~B) If the LD form is not received within 20 days of the triggering event, OHCA ~~shall send~~ sends the Appellant a letter stating the appeal will not be heard because it is untimely. ~~In the case of tax warrant intercept appeals, if the LD form is not received within 30 days of written notice sent by OHCA according to Title 68, Oklahoma Statutes, Section 205.2, OHCA shall send the Appellant a letter stating the appeal will not be heard because it is untimely.~~

(~~3~~C) The staff ~~shall advise~~ advises the Appellant that if there is a need for assistance in reading or completing the grievance form that arrangements will be made.

(D) A decision will be rendered by the ALJ within 45 days of the close of all evidence in the case.

(E) The Administrative Law Judge's decision is appealable to OHCA's CEO under OAC 317:2-1-13.

~~(4) The docket clerk will send the Appellant and any other necessary party notice which states the hearing location, date, and time.~~

(c) **ALJ jurisdiction.** The administrative law judge ~~shall have~~ has jurisdiction of the following matters:

(1) Recipient Appeals:

~~(1) Whether Pre-admission Screening and Resident Review (PASRR) was completed as required by law;~~

~~(2) Disputes involving the SoonerCare contracts and all contracts or subcontracts with health care providers;~~

~~(3) Appeals by Long Term Care facilities for nonpayment of wage enhancements, determinations of overpayment or underpayment of wage enhancements, and administrative penalty determinations as a result of findings made under OAC 317:30-5-131.2(b)(5)(B), (e)(8), and (e)(12);~~

~~(4) Petitions for Rulemaking;~~

(~~5~~A) Discrimination complaints regarding the Medicaid program;

~~(6) Appeals to the decision made by the Business Contracts manager related to Purchasing as found at OAC 317:10-1-5, 317:10-1-13, 317:25-1-5, and 317:25-1-12, and other appeal rights granted by contract;~~

(~~7~~B) Appeals which relate to the scope of services, covered services, complaints regarding service or care, enrollment, disenrollment, and reenrollment in the SoonerCare Program;

(~~8~~C) Fee for Service appeals regarding the furnishing of services, including prior authorizations;

~~(9) Nursing home contracts which are terminated, denied, or nonrenewed;~~

~~(10) Drug rebate appeals;~~

(~~11~~D) Appeals which relate to the tax warrant intercept system through the Oklahoma Health Care Authority. Tax warrant intercept appeals will be heard directly by the ALJ. A decision will be rendered by the Administrative Law Judge within 20 days of the hearing before the ALJ;

(~~12~~E) Complaints regarding the possible violation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA); and

~~(13) Proposed administrative sanction appeals pursuant to OAC 317:35-13-7.~~

(2) Provider Appeals:

(A) Whether Pre-admission Screening and Resident Review (PASRR) was completed as required by law;

(B) Denial of request to dis-enroll recipient from provider's SoonerCare panel;

(C) Appeals by Long Term Care facilities for nonpayment of wage enhancements, determinations of overpayment or underpayment of wage enhancements, and administrative penalty determinations as a result of findings made under OAC 317:30-5-131.2(b)(5), (e)(8), and (e)(12);

(D) Petitions for Rulemaking;

(E) Appeals of insureds participating in O-EPIC which are authorized by OAC 317:45-9-8(a);

(F) Appeals to the decision made by the Business Contracts manager related to Purchasing as found at OAC 317:10-1-5, 317:10-1-13, 317:25-1-5, 317:25-1-12, and other appeal rights granted by contract;

(G) Drug rebate appeals;

(H) Nursing home contracts which are terminated, denied, or non-renewed; and

(I) Proposed administrative sanction appeals pursuant to OAC 317:35-13-7. Proposed administrative sanction appeals will be heard directly by the ALJ. A decision will be rendered by the ALJ within 20 days of the hearing before the ALJ. This is the final and only appeals process for proposed administrative sanctions.

~~(d) **Hearing, ALJ, and Burden of Proof.**~~

~~(1) Hearings shall be conducted in an informal manner without formal rules of evidence or procedure.~~

~~(2) No party is required to be represented by an attorney. Recipients may represent themselves or be represented by another party. Corporate entities must authorize a representative to represent a corporation in a hearing.~~

~~(3) The OHCA Administrative Law Judge or designee may:~~

~~(A) Rule on any requests for extension of time;~~

~~(B) Hold pre-hearing conferences to settle, simplify, or identify issues in a proceeding or to consider other matters that may end in the expeditious disposition of the proceeding;~~

~~(C) Require the parties to state their positions concerning the various issues in the proceeding;~~

~~(D) Require the parties to produce for examination those relevant witnesses and documents under their control;~~

~~(E) Rule on motions and other procedural items;~~

~~(F) Regulate the course of the hearing and conduct of the participants;~~

~~(G) Establish time limits for the submission of motions or memoranda;~~

~~(H) Impose appropriate sanctions against any person failing to obey an order of the ALJ or authorized under the rules in this Chapter which may include:~~

~~(i) Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;~~

~~(ii) Excluding all testimony of an unresponsive or evasive witness; or~~

~~(iii) Expelling the person from further participation in the hearing;~~

~~(I) Take official notice of any material fact not appearing as evidence in the record, if the fact is among traditional matters of judicial notice;~~

~~(J) Administer oaths or affirmations;~~

~~(K) Determine the location of the hearing;~~

~~(L) Require the parties to be present and tape record the proceedings. In the event of the failure of a party to appear, the ALJ shall determine if good cause exists for the failure to appear. If good cause does not exist the ALJ may find in favor of the party who was present;~~

~~(M) Allow either party to request that the hearing be recorded by a court reporter with costs to be borne by the requesting party. The original of such transcription, if ordered, shall be given to the ALJ with a copy to be given to the requesting party;~~

~~(N) Recess and reconvene the hearing;~~

~~(O) Set and/or limit the time frame of the hearing;~~

~~(P) Reconsider or rehear a matter for good cause shown; and~~

~~(Q) Send a copy of the decision by the ALJ to both parties outlining their rights to appeal the decision. The decision letter need not contain findings of fact or conclusions of law.~~

~~(4) The burden of proof during the hearing shall be upon the appellant and the ALJ shall decide the case based upon a preponderance of evidence standard as defined by the Oklahoma Supreme Court.~~

~~(5) A copy of the decision will be forwarded to the docket clerk.~~

317:2-1-2.1. Provider appeals and jurisdictional grounds [REVOKED]

~~(a) The proceedings as described in this Section contain the hearing process for those appeals filed by providers. These appeals encompass all subject matter cases contained in OAC 317:2-1-2(b) except those referred to in OAC 317:2-1-2.3(1) (Surveillance, Utilization and Review System appeals) and 317:2-1-2.3(3) (decisions rendered by the Oklahoma Foundation for Medical Quality).~~

~~(b) All provider appeals are initially heard by the OHCA Administrative Law Judge under OAC 317:2-1-2(b).~~

~~(c) A decision shall be rendered by the ALJ within 45 days of the close of all evidence in the case.~~

~~(d) The Administrative Law Judge's decision is appealable to OHCA's CEO under OAC 317:2-1-4(1).~~

317:2-1-2.2. Recipient appeals [REVOKED]

~~(a) Hearings will be by a Program Panel, except in the case of tax warrant intercept appeals and proposed administrative sanction appeals (refer to OAC 317:35-13-7).~~

~~(1) The Program Panel will be composed of three or more members selected by the ALJ.~~

~~(2) The Program Panel may conduct a paper review of the complaint, or, at their option, hold a personal interview with the appellant to discuss the complaint. The Panel has the power to gather information it finds necessary from any available source, and thereafter, render a decision.~~

~~(3) The Panel must complete their paper review or conduct their formal personal interview and issue a majority decision within 25 days of the date stamped on the request for hearing.~~

~~(4) The Panel's decision shall be in writing and shall be signed by each of the Panel members. The decision shall contain a summary of the complaint and an explanation of the reasoning of the Panel in making their decision. A copy of the decision will be sent to the member outlining the right to appeal the decision. Any appeal of the Panel decision must be instituted within 15 days of the mailing of the adverse ruling, excepting recipient denials which are automatically appealed to the ALJ.~~

~~(5) A copy of the decision shall be forwarded to the docket clerk.~~

~~(b) Appeal from a decision of the Program Panel will be heard by the Administrative Law Judge. A decision will be rendered by the Administrative Law Judge within twenty (20) days of the appeal to the ALJ.~~

~~(c) Tax warrant intercept appeals will be heard directly by the ALJ. A decision will be rendered by the Administrative Law Judge within twenty (20) days of the hearing before the ALJ.~~

~~(d) Proposed administrative sanction appeals will be heard directly by the ALJ. A decision will be rendered by the ALJ within 20 days of the hearing before the ALJ. This is the final and only appeals process for proposed administrative sanctions.~~

317:2-1-2.3. Other grievance procedures and processes [REVOKED]

~~Other grievance procedures and processes include:~~

~~(1) Surveillance, Utilization and Review System (SURS) appeals to the Medical Advisory Committee (MAC).~~

~~(A) If a provider disagrees with a decision of the Surveillance, Utilization and Review System Unit (SURS) which has determined that the provider has received an overpayment, the provider may appeal, within twenty (20) days of the date of that decision, the decision to a six member subcommittee of the Medical Advisory Committee (MAC). The subcommittee shall be selected by the chairman of the MAC.~~

~~(B) The appeal from the SURS decision shall be commenced by the receipt of a letter from the appellant provider. The letter must set out with specificity, the overpayment decision to which the provider objects along with the grounds for appeal. The letter should explain in detail, the factual and/or legal basis for disagreement with the allegedly erroneous decision. The letter shall also include all relevant exhibits the provider believes necessary to decide the appeal.~~

~~(C) Upon the receipt of the appeal by the docket clerk, the matter shall be docketed for the next meeting of the MAC. Any appeal received less than four weeks before a scheduled MAC meeting will be set for the following MAC meeting.~~

~~(D) The appeal shall be forwarded to the SURS unit by the docket clerk for distribution to the members of the subcommittee and for preparation of the OHCA's case.~~

~~(E) At the discretion of the MAC, witnesses may be called and information may be solicited from any party by letter, telephonic communication, fax, or other means. The subcommittee may request that members of the Authority be present during their consideration of the appeal. Members of the Authority's Legal Division may be asked to answer legal questions regarding the appeal.~~

~~(F) The subcommittee shall issue a recommendation regarding the appeal, in writing, within 30 days of the hearing. An exception to the 30 day rule will apply in cases where the subcommittee sets the case over until its next scheduled meeting in order to gather additional evidence. The written recommendation shall list the members of the subcommittee who participated in the decision. In cases where an appeal must be continued, the subcommittee shall issue a letter within 30 days of the initial hearing to inform the appellant of the continuance.~~

~~(G) The recommendation, after being formalized, shall be sent to the docket clerk for review by the State Medicaid Director. The State Medicaid Director shall issue a decision regarding the appeal within 10 days of the docket clerk's receipt of the recommendation from the MAC. The decision shall be issued to the appellant or his/her authorized agent.~~

~~(H) If the provider is dissatisfied with the Medicaid Director's decision, it may be appealed to the CEO under OAC 317:2-1-4(1).~~

~~(2) This paragraph explains the appeal process to be accorded all nursing home providers whose contracts are terminated, denied or nonrenewed. No procedure is afforded a nursing facility whose contract is limited in any other fashion.~~

~~(A) If a nursing home provider's contract is terminated, nonrenewed or denied prior to the action's effective date the provider will be afforded an informal reconsideration in accordance with 42 C.F.R. 431.154.~~

~~(B) The notice of termination, nonrenewal or, denial of contract shall include the findings it was based upon. The letter will be sent by certified mail to the provider.~~

~~(C) The provider will have 20 days to respond to the notice. The response should outline the reasons why the Authority's decision to terminate, nonrenew, or deny the contract is wrong. The response by the provider must include a detailed position addressing the findings set out in the Authority's letter. The provider may request an extension of the 20 day limit if "good cause" exists that prevents the provider from refuting the findings in 20 days. A finding of "good cause" is in OHCA's discretion.~~

~~(D) Based upon the provider's response, the Authority shall affirm or deny the notice of nonrenewal, termination or denial.~~

~~(E) If the Oklahoma Health Care Authority affirms the notice of termination, nonrenewal, or denial or the provider files no timely response, the effective date shall pass and upon affirmation of the notice the process described in OAC 317:2-1-2.1 and 317:2-1-2(b) & (c) shall apply.~~

~~(F) The hearing afforded the provider after the effective date shall satisfy the requirements of 42 C.F.R. 431.153.~~

~~(G) If the facility is a skilled nursing facility, the facility shall receive a notice as required by 42 C.F.R. 431.153(d)(1) and (d)(2).~~

~~(3) This subparagraph explains the administrative processes available to providers who have reviews completed by the Oklahoma Foundation for Medical Quality (OFMQ). The OFMQ conducts an administrative process for those providers it reviews. The process afforded providers by OFMQ is the only administrative remedy available to providers. The decision issued by the OFMQ is considered by the OHCA to be a final administrative determination. The final OFMQ determination is not appealable to the OHCA for any further administrative hearings. After OFMQ's decision, OHCA will recoup the monies paid the provider related to the review.~~

~~(4) The purpose of this subparagraph is to afford a process to both the manufacturer and the state to administratively resolve drug rebate discrepancies. These rules anticipate discrepancies between the manufacturer~~

~~and OHCA which would require the manufacturer to pay a higher rebate or a lower rebate. These regulations provide a mechanism for both informal dispute resolution of drug rebate discrepancies between the manufacturer and OHCA and a mechanism for appeals of drug rebate discrepancies between the manufacturer and OHCA.~~

~~(A) The process begins at the end of each calendar quarter when the Authority shall mail a copy of the state's past quarter's utilization data to the manufacturer. Utilization data and a billing for rebates shall be mailed to the manufacturer within 60 days after the end of each quarter. It is this data which dictates the application of the federal drug rebate formula.~~

~~(B) Within 30 days from the date utilization data is sent to the manufacturer, the manufacturer may edit state data and resolve data inconsistencies with the state. The manufacturer may utilize telephone conferences, letters and any other mechanism to resolve data inconsistencies in mutual agreement with the state.~~

~~(C) Within 30 days after the utilization data is mailed to the manufacturer, the manufacturer may;~~

~~(i) pay the same amount as billed by the state with the quarterly utilization data;~~

~~(ii) pay an amount which differs from the amount billed by the state with the utilization data and send disputed data information;~~

~~(iii) pay nothing and send no disputed data information;~~

~~(iv) pay nothing and send disputed data information.~~

~~(D) In the event the state receives the rebate amount billed by the thirtieth day, the dispute ends.~~

~~(E) If after 30 days one of the following events occurs, the state shall acknowledge the receipt of the correspondence and review the disputed data;~~

~~(i) the receipt of an amount lower than that billed to the manufacturer;~~

~~(ii) the receipt of disputed data.~~

~~(F) In the event no disputed data is received and no payment is received, interest shall be computed in accordance with the provisions of federal law found at 42 U.S.C. Section 1396b (d)(5)and shall be compounded upon the amount billed from 38 days after the date utilization data is sent.~~

~~(G) In the event a lower amount than billed is paid or in the event disputed data is sent, and no money is received, interest shall be computed in accordance with 42 U.S.C. Section 1396b (d)(5) and shall be computed from 38 days from the date utilization data is sent to the manufacturer.~~

~~(H) Within 70 days from the date utilization data is sent to the manufacturer, the state shall make its final informal review of the disputed data. OHCA shall mail a second notice to the manufacturer which shall include:~~

~~(i) receipt of the rebate, if any,~~

~~(ii) receipt of the dispute,~~

~~(iii) a statement regarding the interest amount, and~~

~~(iv) a statement regarding the appeal rights of the manufacturer with a copy of the appeal form.~~

~~(I) Within 90 days of the date utilization data is sent to the manufacturer or within 20 days of the date a second notice is mailed to the manufacturer, whichever is sooner, the state or the manufacturer may request a hearing to administratively resolve the matter.~~

~~(J) The administrative appeal of drug rebate discrepancies includes:~~

~~(i) The appeal process shall begin by the filing of a form LD-2 by the manufacturer or OHCA.~~

~~(ii) The process afforded the parties shall be the process found at OAC 317:2-1-2.1. The process provided by OAC 317:2-1-2(b)and (c) shall also apply to these hearings.~~

~~(iii) With respect to the computation of interest, interest shall continue to be computed from the 38 day based upon the policy contained in the informal dispute resolution rules above.~~

~~(iv) The ALJ's decision shall constitute the final administrative decision of the Oklahoma Health Care Authority.~~

~~(v) If the decision of the ALJ affirms the decision of the Authority in whole or in part, payment from the manufacturer must be made within 30 days of the decision. If the decision of the ALJ reverses the decision of the Authority, the Authority shall make such credit or action within 30 days of the decision of the ALJ.~~

~~(vi) The nonpayment of the rebate by the manufacturer within 30 days after the ALJ's decision shall be reported to the Health Care Financing Administration and may be the basis of an exclusion action by OHCA.~~

~~(5) This subparagraph explains the appeal process, pursuant to 63 O.S. (Supp. 1999) §5030.3(B), accorded any party aggrieved by a decision of the OHCA Board or Administrator (CEO) concerning a proposed recommendation of the Medicaid Drug Utilization Review Board (DUR).~~

~~(A) The aggrieved party may appeal pursuant to OAC 317:2-1-2 et seq. (OHCA grievance rules).~~

~~(B) The Board finds that the prescription of Title 63 §5030.3(B) (Supp. 1999) is somewhat contradictory with the functions of the DUR Board. More specifically, in most instances, the DUR Board suggests policies that must be rulemade. Rules promulgated by the OHCA Board do not lend to an "individual proceeding notice" as contemplated by Article II of the Oklahoma Administrative Procedures Act, specifically, Title 75 §309. Thus, in instances where the OHCA Board promulgates rules as a result of policy recommendations by the DUR Board, this Board will consider a party aggrieved by these rules to have filed a Petition for Rulemaking under 75 §305. In~~

~~making this interpretation of 63 §5030.1, the Board will not enforce the last sentence of 74 §305. In making this interpretation, the Board finds that it is taking two somewhat conflicting provisions, and combining them to effectuate the intent of the legislature - to provide a hearing to those aggrieved by recommendations by the DUR Board and accepted by the OHCA Board.~~

~~(C) In instances where the DUR Board makes a recommendation accepted by the Board against an individual provider [for example, a recommendation under 42 U.S.C. §1396r 8(g)(3)(c)(iii)(IV)], OHCA will provide an individual proceeding under the Oklahoma Administrative Procedures Act.~~

~~(D) In any appeal under subparagraphs (B) or (C) of this paragraph, the OHCA Board delegates the OHCA ALJ to preside over the above hearing and present the Board with proposed findings of fact and conclusions of law in accordance with Article II of the Administrative Procedures Act. The OHCA Board shall either accept the ALJ's written decision, reject it, or amend the recommendations.~~

~~(E) Appeals filed pursuant to subparagraphs (B) or (C) of this paragraph, shall be made within twenty (20) days of the OHCA Board's acceptance of the recommendation by the DUR Board.~~

~~(F) After Proposed Findings of Fact and Conclusions of Law are presented to the OHCA Board, the Board shall have a period of 120 days to issue a final administrative order.~~

~~(G) The Agency's legal division shall construct a form called the LD-3, which shall be used for parties to file an action under subparagraphs (B) and (C) of this paragraph.~~

317:2-1-4. Appeal to the Chief Executive Officer [REVOKED]

~~Appeal to the Chief Executive Officer (CEO) of the Oklahoma Health Care Authority shall include:~~

~~(1) Within 20 days of decisions made pursuant to provider or SURS appeals found at this Chapter, either party may appeal a decision to the CEO of the Authority. Such appeal shall be commenced by a letter or fax received by the CEO within 20 days of the receipt of the prior decision made by the ALJ or Medicaid Director. The appeal shall concisely and fully explain the reasons for the request. No new evidence may be presented to the CEO. Evidence presented must be confined to the records below.~~

~~(2) Appeals to the CEO under recipient proceedings shall be commenced by a letter received no later than ten 10 days of the receipt of the decision by the ALJ. Should the appellant request a transcription to prosecute its appeal to the CEO, the appellant shall be required to execute a waiver relieving the OHCA from completing a hearing within 90 days.~~

~~(3) For provider and SURS proceedings the CEO shall have 45 days to render a written decision.~~

~~(4) For recipient proceedings, the CEO shall have five days to render a decision.~~

~~(5) The only appeal for proposed administrative sanctions is before the ALJ and the ALJ decision is not appealable to the CEO.~~

317:2-1-5. Hearing procedures

(a) **Program Panel Hearings.** Program Panel Hearings will be by a Program Panel, except in the case of tax warrant intercept appeals and proposed administrative sanction appeals [refer to OAC 317:2-1-2(c)].

(1) The Program Panel will be composed of three or more members selected by the ALJ.

(2) The Program Panel may conduct a paper review of the complaint, or, at their option, hold a personal interview with the appellant to discuss the complaint. The Panel has the power to gather information it finds necessary from any available source, and thereafter, render a decision.

(3) The Panel must complete their paper review or conduct their formal personal interview and issue a majority decision within 25 days of the date stamped on the request for hearing.

(4) The Panel's decision will be in writing and will be signed by each of the Panel members. The decision will contain a summary of the complaint and an explanation of the reasoning of the Panel in making their decision. A copy of the decision will be sent to the member outlining the right to appeal the decision. Any appeal of the Panel decision must be instituted within 20 days of the mailing of the adverse ruling.

(5) A copy of the decision will be forwarded to the docket clerk.

(6) Appeal from a decision of the Program Panel will be heard by the Administrative Law Judge. A decision will be rendered by the Administrative Law Judge within forty days of the appeal to the ALJ.

(b) **Administrative Law Judge.**

(1) Hearings will be conducted in an informal manner without formal rules of evidence or procedure.

(2) No party is required to be represented by an attorney. Recipients may represent themselves or authorize another party to represent them. A person or entity desiring to represent a recipient must provide documentation of the consent of the recipient to be represented by that person or entity. An appeal will be rejected without documentation of representation. Individuals appearing for corporate entities will be deemed to be authorized to represent the corporation in a hearing.

(3) The docket clerk will send the Appellant and any other necessary party notice which states the haring location, date, and time.

(4) The OHCA Administrative Law Judge or designee may:

(A) Rule on any requests for extension of time;

(B) Hold pre-hearing conferences to settle, simplify, or identify issues in a proceeding or to consider other matters that may end in the expeditious disposition of the proceeding;

(C) Require the parties to state their positions concerning the various issues in the proceeding;
(D) Require the parties to produce for examination those relevant witnesses and documents under their control;
(E) Rule on motions and other procedural items;
(F) Regulate the course of the hearing and conduct of the participants;
(G) Establish time limits for the submission of motions or memoranda;
(H) Impose appropriate sanctions against any person failing to obey an order of the ALJ or authorized under the rules in this Chapter which may include:
(i) Refusing to allow the person to assert or oppose designated claims or defenses, or prohibiting that person from introducing designated matters in evidence;
(ii) Excluding all testimony of an unresponsive or evasive witness; or
(iii) Expelling the person from further participation in the hearing;
(I) Take official notice of any material fact not appearing as evidence in the record, if the fact is among traditional matters of judicial notice;
(J) Administer oaths or affirmations;
(K) Determine the location of the hearing;
(L) Allow either party to request that the hearing be recorded by a court reporter with costs to be borne by the requesting party. The original of such transcription, if ordered, will be given to the ALJ with a copy to be given to the requesting party;
(M) Recess and reconvene the hearing;
(N) Set and/or limit the time frame of the hearing;
(O) Reconsider or rehear a matter for good cause shown; and
(P) Send a copy of the decision by the ALJ to both parties outlining their rights to appeal the decision. The decision letter need not contain findings of fact or conclusions of law.

(5) The burden of proof during the hearing will be upon the appellant and the ALJ will decide the case based upon a preponderance of evidence standard as defined by the Oklahoma Supreme Court. Parties who fail to appear at a hearing, after notification of said hearing date, will have their cases dismissed for failure to prosecute.
(6) Parties may file preliminary motions in the case. Any such motions must be filed within 15 calendar days prior to the hearing date. Response to preliminary motions must be made within 7 calendar days of the date the motion is filed with OHCA. Preliminary motions will be ruled upon 3 days prior to the hearing date.
(7) In any case in which a recipient requests a continuance, OHCA will not be prejudiced to complete the case within 90 days.

317:2-1-6. Other grievance procedures and processes

Other grievance procedures and processes include those set out in OAC 317:2-1-7 [Surveillance, Utilization and Review System (SURS) and Program Integrity Audits/Reviews Appeals]; OAC 317:2-1-8 (Nursing Home Provider Contract Appeals); OAC 317:2-1-9 [OHCA's Designated Agent's Appeal Process for Behavioral Health Services]; OAC 317:2-1-10(Drug Rebate Appeal Process); OAC 317:2-1-11 [Medicaid Drug Utilization Review Board (DUR) Appeal Process]; and OAC 317:2-1-12 (For Cause Provider Contract Suspension/Termination Appeals Process).

317:2-1-7. Surveillance, Utilization and Review System (SURS) and Program Integrity Audits/Reviews appeals

SURS and Program Integrity Audits/Reviews appeals are made to the State Medicaid Director.
(1) If a provider disagrees with a decision of the Surveillance, Utilization and Review System Unit (SURS) or Program Integrity Audit/Review which has determined that the provider has received an overpayment, the provider may appeal, within 20 days of the date of that decision to the State Medicaid Director.
(2) The appeal from the SURS or Program Integrity Audit/Review decision will be commenced by the receipt of a letter from the appellant provider. The letter must set out with specificity, the overpayment decision to which the provider objects along with the grounds for appeal. The letter should explain in detail, the factual and/or legal basis for disagreement with the allegedly erroneous decision. The letter will also include all relevant exhibits the provider believes necessary to decide the appeal.
(3) Upon the receipt of the appeal by the docket clerk, the matter will be docketed for the next meeting of the MAC. Any appeal received less than four weeks before a scheduled MAC meeting will be set for the following MAC meeting.
(4) The appeal will be forwarded to the SURS unit or Program Integrity Audit/Review unit by the docket clerk for distribution to the members of the subcommittee and for preparation of the OHCA's case. A subcommittee of the MAC will be formed and render a recommendation to the State Medicaid Director.
(5) At the discretion of the MAC, witnesses may be called and information may be solicited from any party by letter, telephonic communication, fax, or other means. The subcommittee may request that members of the Authority be present during their consideration of the appeal. Members of the Authority's Legal Division may be asked to answer legal questions regarding the appeal.
(6) The subcommittee will issue a recommendation regarding the appeal, in writing, within 30 days of the hearing. An exception to the 30 day rule will apply in cases where the subcommittee sets the case over until its next scheduled meeting in order to gather additional evidence. The written recommendation will list the members of the subcommittee who participated in the decision. In cases

where an appeal must be continued, the subcommittee will issue a letter within 30 days of the initial hearing to inform the appellant of the continuance.

(7) The recommendation, after being formalized, will be sent to the docket clerk for review by the State Medicaid Director. The State Medicaid Director will issue a decision regarding the appeal within 60 days of the docket clerk's receipt of the recommendation from the MAC. The decision will be issued to the appellant or his/her authorized agent.

(8) If the provider is dissatisfied with the Medicaid Director's decision, it may be appealed to the CEO under OAC 317:2-1-13.

317:2-1-8. Nursing home provider contract appeals

This Section explains the appeal process to be accorded all nursing home providers whose contracts are terminated, denied or non-renewed. No procedure is afforded a nursing facility whose contract is limited in any other fashion.

(1) If a nursing home provider's contract is terminated, non-renewed or denied prior to the action's effective date, the provider will be afforded an informal reconsideration in accordance with 42 C.F.R. 431.154.

(2) The notice of termination, non-renewal or, denial of contract will include the findings it was based upon. The letter will be sent by certified mail to the provider.

(3) The provider will have 20 days to respond to the notice. The response should outline the reasons why the Authority's decision to terminate, non-renew, or deny the contract is wrong. The response by the provider must include a detailed position addressing the findings set out in the Authority's letter. The provider may request an extension of the 20 day limit if "good cause" exists that prevents the provider from refuting the findings in 20 days. A finding of "good cause" is in OHCA's discretion.

(4) Based upon the provider's response, the Authority will affirm or deny the notice of non-renewal, termination or denial.

(5) If the Oklahoma Health Care Authority affirms the notice of termination, non-renewal, or denial or the provider files no timely response, the effective date will pass and upon affirmation of the notice, the process described in OAC 317:2-1-2(b), 317:2-1-2(c)(2) and 317:2-1-5(b) will apply.

(6) The hearing afforded the provider after the effective date will satisfy the requirements of 42 C.F.R. 431.153.

(7) If the facility is a skilled nursing facility, the facility will receive a notice as required by 42 C.F.R. 431.153(d)(1) and (2).

317:2-1-9. OHCA's Designated Agent's appeal process for Behavioral Health services

This Section explains the administrative processes available to providers who have reviews completed by OHCA's Quality Improvement Organization (QIO). The QIO conducts an administrative process for those providers it reviews. The process afforded providers by QIO is the only administrative remedy available to providers. The decision issued by the QIO is considered by the OHCA to be a final administrative determination. The final QIO determination is not appealable to the OHCA for any further administrative hearings. After the QIO'S decision, OHCA will recoup the monies paid the provider related to the review.

317:2-1-10. Drug Rebate appeal process

The purpose of this Section is to afford a process to both the manufacturer and the state to administratively resolve drug rebate discrepancies. These rules anticipate discrepancies between the manufacturer and OHCA which would require the manufacturer to pay a higher rebate or a lower rebate. These regulations provide a mechanism for both informal dispute resolution of drug rebate discrepancies between the manufacturer and OHCA and a mechanism for appeals of drug rebate discrepancies between the manufacturer and OHCA.

(1) The process begins at the end of each calendar quarter when the Authority will mail a copy of the State's past quarter's utilization data to the manufacturer. Utilization data and a billing for rebates will be mailed to the manufacturer within 60 days after the end of each quarter. It is this data which dictates the application of the federal drug rebate formula.

(2) Within 30 days from the date utilization data is sent to the manufacturer, the manufacturer may edit state data and resolve data inconsistencies with the state. The manufacturer may utilize telephone conferences, letters and any other mechanism to resolve data inconsistencies in mutual agreement with the state.

(3) Within 30 days after the utilization data is mailed to the manufacturer, the manufacturer may:

(A) pay the same amount as billed by the state with the quarterly utilization date;

(B) pay an amount which differs from the amount billed by the state with the utilization data and send disputed data information;

(C) pay nothing and send no disputed data information;

(D) pay nothing and send disputed data information.

(4) In the event the state receives the rebate amount billed by the 30th day, the dispute ends.

(5) If after 30 days one of the following events occurs, the state will acknowledge the receipt of the correspondence and review the disputed data:

(A) the receipt of an amount lower than that billed to the manufacturer;

(B) the receipt of disputed data.

(6) In the event no disputed data is received and no payment is received, interest will be computed in accordance with the provisions of federal law found at 42 U.S.C. Section 1396b(d)(5) and will be compounded upon the amount billed from 38 days after the date utilization data is sent.

(7) In the event a lower amount than billed is paid or in the event disputed data is sent, and no money is received, interest will be computed in accordance with 42 U.S.C. Section 1396(d)(5) and will be computed from 38 days from the date utilization data is sent to the manufacturer.

(8) Within 70 days from the date utilization data is sent to the manufacturer, the state will make its final informal review of the disputed data. OHCA will mail a second notice to the manufacturer which will include:

(A) receipt of the rebate, if any;

(B) receipt of the dispute;

(C) a statement regarding the interest amount; and

(D) a statement regarding the appeal rights of the manufacturer with a copy of the appeal form.

(9) Within 90 days of the date utilization data is sent to the manufacturer or within 20 days of the date a second notice is mailed to the manufacturer, whichever is sooner, the state or the manufacturer may request a hearing to administratively resolve the matter.

(10) The administrative appeal of drug rebate discrepancies includes:

(A) The appeal process will begin by the filing of a form LD-2 by the manufacturer or OHCA.

(B) The process afforded the parties will be the process found at OAC 317:2-1-5(b). The process provided by OAC 317:2-1-2(b) and (c) will also apply to these hearings.

(C) With respect to the computation of interest, interest will continue to be computed from the 38 day based upon the policy contained in the informal dispute resolution rules above.

(D) The ALJ's decision will constitute the final administrative decision of the OHCA.

(E) If the decision of the ALJ affirms the decision of OHCA in whole or in part, paymnent from the manufacturer must be made within 30 days of the decision. If the decision of the ALJ reverses the decision of the OHCA, the OHCA will make such credit or action within 30 days of the decision of the ALJ.

(F) The nonpayment of the rebate by the manufacturer within 30 days after the ALJ's decision will be reported to the Centers for Medicare and Medicaid Services and may be the basis of an exclusion action by the OHCA.

317:2-1-11. Medicaid Drug Utilization Review Board (DUR) appeal process

This Section explains the appeal process, pursuant to 63 O.S. §5030.3(8) (Supp. 1999), accorded any part aggrieved by a decision of the OHCA Board or Administrator (CEO) concerning a proposed recommendation of the Medicaid Drug Utilization Review Board (DUR).

(1) The aggrieved party may appeal pursuant to OAC 317:2-1-2 et seq. OHCA Appeals).

(2) The Board finds that the prescription of Title 63 O.S. § 5030.3(B) is somewhat contradictory with the functions of the DUR Board. More specifically, in most instances, the DUR Board suggests policies that must be rule made. Rules promulgated by the OHCA Board do not lend to an "individual proceeding notice" as contemplated by Article II of the Oklahoma Administrative Procedures Act, specifically, Title 75 O.S. §309. Thus, in instances where the OHCA Board promulgates rules as a result of policy recommendations by the DUR Board, this Board will consider a party aggrieved by these rules to have filed a Petition for Rulemaking under 75 O.S. §305. In making this interpretation of 63 O.S. §5030.1, the Board will not enforce the last sentence of 74 O.S. §305. In making this interpretation, the Board finds that it is taking two somewhat conflicting provisions, and combining them to effectuate the intent of the legislature - to provide a hearing to those aggrieved by recommendations by the DUR Board and accepted by the OHCA Board.

(3) In instances where the DUR Board makes a recommendation accepted by the Board against an individual provider [for example, a recommendation under 42 U.S.C. §1396a8(g)(3)(c)(iii)(IV)], OHCA will provide an individual proceeding under the Oklahoma Administrative Procedures Act.

(4) In any appeal under (1) and (2) of this subsection, the OHCA Board delegates the OHCA ALJ to preside over the above hearing and present the Board with proposed findings of fact and conclusions of law in accordance with Article II of the Administrative Procedures Act. The OHCA Board may accept the ALJ's written decision, reject it, or amend the recommendations.

(5) Appeals filed pursuant to (1) and (2) of this subsection, will be made within 20 days of the OHCA Board's acceptance of the recommendation by the DUR Board.

(6) After Proposed Findings of Fact and Conclusions of Law are presented to the OHCA Board, the Board will have a period of 120 days to issue a final administrative order.

(7) The Agency's Legal Services Division will construct a form called the LD-3, which will be used for parties to file an action under (1) and (2) of this subsection.

317:2-1-12. For Cause provider contract suspension/termination appeals process

This Section explains the appeals process for providers whose Medicaid contracts have been suspended/terminated by the OHCA for cause. Those providers whose contracts have been affected by other OHCA actions cannot request an appeal of those measures.

(1) **Procedure for suspending/terminating provider's contract.**

(A) **Notice of proposed suspension or termination.** The OHCA will provide notice to the medical services provider of the proposed suspension or termination of provider contract. The written notice of suspension/termination will state:

(i) the reasons for the proposed suspension/termination;

(ii) the date upon which the suspension/termination will be effective; and

(iii) a statement that the medical services provider has a right to review prior to the suspension/termination of the provider's contract (refer to subparagraph (B) of this paragraph).

(B) **Right to review prior to suspension/termination of provider contract.** Before the medical services provider's contract is suspended or terminated, the OHCA will give the medical services provider the opportunity to submit documents and written arguments against the suspension/termination of the provider's contract.

(C) **Notice of suspension or termination.**

(i) After the review of the medical services provider's written response, the OHCA will make a final administrative decision subject to a post-suspension or termination hearing.

(ii) After the review of the medical services provider's written response, the OHCA will make a final administrative decision subject to a post-sanction hearing. Should the OHCA decide not to suspend or terminate the provider's contract, the medical services provider will be notified of the reasons for the decision.

(iii) Should the OHCA make a decision to suspend or terminate the medical services provider's contract, the OHCA will send a notice stating:

(I) the reasons for the decision;

(II) the effective date of the suspension or termination of the contract;

(III) the medical services provider's right to request a post-suspension or termination hearing;

(IV) the earliest date in which the agency will accept a request for reinstatement; and

(V) the requirements and procedures for reinstatement.

(2) **Post-suspension/termination hearing.** After the effective date of the suspension or termination of the provider's contract, the medical services provider is entitled to receive a post-suspension or termination hearing. The hearing committee for the OHCA will be comprised of three members of the OHCA and two other members as appointed. The representative who investigated the case will not be a representative if an investigation was initiated or completed.

(A) After the provider's request for the post-suspension/termination hearing is made, a hearing date will be established. A certified letter will be sent to the provider giving notification of the hearing date and naming the contact person. The contact person will answer procedural questions about the hearing.

(B) Ten days prior to the hearing, the medical services provider will submit a brief written statement detailing the evidence which will be presented by the provider at the hearing. Such statement must detail the facts which will be refuted by the provider. The purpose of the hearing will be limited to issues raised in the letter of suspension or termination as the cause of suspending or terminating the provider contract.

(C) The provider may be represented by an authorized representative, with documentation to that effect, at the informal hearing and/or the provider may present testimony himself or herself and have witnesses present.

(D) At the conclusion of the hearing, a decision will be made by the Hearing Committee. The provider will be notified in writing of the decision within 20 days of the final day of the hearing. The decision letter will constitute the agency's final decision regarding the matter.

317:2-1-13. Appeal to the Chief Executive Officer

An appeal to the Chief Executive Officer (CEO) of the Oklahoma Health Care Authority includes:

(1) Within 20 days of decisions made pursuant to provider or SURS/Program Integrity Audits/Reviews appeals found at this Chapter, either party may appeal a decision to the CEO of the Authority. Such appeal will be commenced by a letter or fax received by the CEO within 20 days of the receipt of the prior decision made by the ALJ or Medicaid Director. The appeal will concisely and fully explain the reasons for the request. No new evidence may be presented to the CEO. Evidence presented must be confined to the records below.

(2) Appeals to the CEO under recipient proceedings will be commenced by a letter received no later than 10 days of the receipt of the decision by the ALJ. Should the appellant request a transcription to prosecute its appeal to the CEO, the appellant will be required to execute a waiver relieving the OHCA from completing its fair process hearing within 90 days.

(3) For provider and SURS/Program Integrity Audits/Reviews proceedings, the CEO will have 90 days from receipt of the appeal to render a written decision.

(4) For recipient proceedings, the CEO will have 30 days from receipt of the appeal to render a written decision.

(5) The only appeal for proposed administrative sanctions is before the ALJ and the ALJ decision is not appealable to the CEO.

[OAR Docket #06-1004; filed 5-22-06]

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

[OAR Docket #06-1002]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. General Scope and Administration
Part 1. General Provider Policy

317:30-3-19. through 317:30-3-21. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-25. [AMENDED]
Part 3. Hospitals
317:30-5-41. [AMENDED]
Part 4. Long Term Care Hospitals
317:30-5-62. [AMENDED]
Part 9. Long Term Care Facilities
317:30-5-124. [AMENDED]
317:30-5-131.1. through 317:30-5-131.2. [AMENDED]
Part 32. Soonerride Non-Emergency Transportation
317:30-5-327. [AMENDED]
Part 65. Management Services for Over 21
317:30-5-586.1. [AMENDED]
Part 83. Residential Behavior Management Services in Foster Care Settings
317:30-5-746. [AMENDED]
(Reference APA WF # 05-24A)

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Part 3. Hospitals
317:30-5-41. [AMENDED]
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Part 9. Long Term Care Facilities
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317:30-5-131.1 through 317:30-5-131.2. [AMENDED]
Part 32. Soonerride Non-Emergency Transportation
317:30-5-327. [AMENDED]
Part 65. Management Services for Over 21
317:30-5-586.1. [AMENDED]
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ANALYSIS:
Agency appeal rules are being revised to accurately reflect the agency which will hear various employer and employee eligibility appeals for the Oklahoma Employer and Employee Partnership for Insurance Coverage (O-EPIC) Program. Rules regarding the various appeal processes are relocated to individual sections to help clarify the correct procedures to be followed. In addition, rules are amended to correct various rule citations. Revisions are needed to provide appeal guidelines for the O-EPIC program and clarify appeal procedures Further revisions bring rules in line with other Sections of rules.

CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. GENERAL PROVIDER POLICY

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-19. Administrative sanctions

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

(1) **"Abuse"** means provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, or in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care. It also recognizes recipient practices that result in unnecessary cost to the Medicaid program.

(2) **"Conviction" or "Convicted"** means a judgment of conviction has been entered by a Federal, State, or local court, regardless of whether an appeal from that judgment is pending.

(3) **"Exclusion"** means items or services which will not be reimbursed under Medicaid because they were furnished by a specific provider who has defrauded or abused the Medicaid program.

(4) **"Fraud"** means an intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. It includes any act that constitutes fraud under applicable Federal or State law.

(5) **"Knowingly"** means that a person, with respect to information:

(A) has actual knowledge of the information;

(B) acts in deliberate ignorance of the truth or falsity of the information; or

(C) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.

(6) **"Medical Services Providers"** means:

(A) **"Practitioner"** means a physician or other individual licensed under State law to practice his or her profession or a physician who meets all requirement for employment by the Federal Government as a physician and is employed by the Federal Government in an IHS facility or affiliated with a 638 Tribal facility.

(B) **"Supplier"** means an individual or entity, other than a provider or practitioner, who furnishes health care services under Medicaid or other medical services programs administered by the Oklahoma Health Care Authority.

(C) **"Provider"** means:

(i) A hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility, home health agency, or a hospice that has in effect an agreement to participate in Medicaid, or any other medical services program administered by the Oklahoma Health Care Authority, or

(ii) a clinic, a rehabilitation agency, or a public health agency that has a similar agreement.

(D) **"Laboratories"** means any laboratory or place equipped for experimental study in science or for testing or analysis which has an agreement with the Oklahoma Health Care Authority to receive Medicaid monies.

(E) **"Pharmacy"** means any pharmacy or place where medicines are compounded or dispensed or any pharmacist who has an agreement with OHCA to receive Medicaid monies for the dispensing of drugs.

(F) **"Any other provider"** means any provider who has an agreement with OHCA to deliver health services, medicines, or medical services for the receipt of Medicaid monies.

(7) **"OIG"** means Office of Inspector General of the Department of Health and Human Services.

(8) **"Sanctions"** means any administrative decision by OHCA to suspend or exclude a medical service provider(s) from the Medicaid program or any other medical services program administered by the Oklahoma Health Care Authority.

(9) **"Suspension"** means items or services furnished by a specified provider will not be reimbursed under the Medicaid program.

(10) **"Willfully"** means proceeding from a conscious motion of the will; voluntary, intending the result which comes to pass; intentional.

(b) **Basis for sanctions.**

(1) The Oklahoma Health Care Authority may sanction a medical provider who has an agreement with OHCA for the following reasons:

(A) Knowingly or willfully made or caused to be made any false statement or misrepresentation of material fact in claiming, or use in determining the right to, payment under Medicaid; or

(B) Furnished or ordered services under Medicaid that are substantially in excess of the recipient's needs or that fail to meet professionally recognized standards for health care; or

(C) Submitted or caused to be submitted to the Medicaid program bills or requests for payment containing charges or costs that are substantially in excess of customary charges or costs. However, the agency must not impose an exclusion under this section if it finds the excess charges are justified by unusual circumstances or medical complications requiring additional time, effort, or expense in localities in which it is accepted medical practice to make an extra charge in such case.

(2) The agency may base its determination that services were excessive or of unacceptable quality on reports, including sanction reports, from any of the following sources:

(A) The PRO for the area served by the provider or the PRO contracted by OHCA;

(B) State or local licensing or certification authorities;

(C) Peer review committees of fiscal agents or contractors;

(D) State or local professional societies;

(E) Surveillance and Utilization Review Section Reports done by OHCA; or

(F) Other sources deemed appropriate by the Medicaid agency or the OIG.

(3) OHCA must suspend from the Medicaid program any medical services provider who has been suspended from participation in Medicare or Medicaid due to a conviction of a program related crime. This suspension must be at a minimum the same period as the Medicare suspension.

(4) OHCA must also suspend any convicted medical services provider who is not eligible to participate in Medicare or Medicaid whenever the OIG directs such action. Such suspension must be, at a minimum, the same period as the suspension by the OIG.

(c) **Procedure for imposing sanctions.** The procedure for imposing a sanction under this section and the due process accorded in this section is provided at OAC 317:2-1-5.

~~(1) **Notice of proposed administrative sanction.**~~

~~(A) If the Oklahoma Health Care Authority proposes to sanction, it will send the medical services provider a written notice stating:~~

~~(i) the reasons for the proposed sanction;~~

~~(ii) the date upon which the sanction will be effective;~~

~~(iii) the result of the sanction should it be imposed; and~~

~~(iv) a statement that the medical services provider has a right to review (See (2) of this subsection) prior to the imposition of the sanction.~~

~~(B) A copy of this section of the rules will be attached to the letter of proposed action.~~

~~(2) **Right to review prior to the imposition of the sanction.** Before imposing the sanction, the agency will give the medical services provider the opportunity to submit documents and written arguments against the exclusion.~~

~~(3) **Notice of sanction.**~~

~~(A) After the review of the medical services provider's written response, the agency will make a final administrative decision subject to a post sanction hearing. Should OHCA make a decision to sanction the medical services provider, it shall send a notice which must state:~~

~~(i) the reasons for the decision;~~

~~(ii) the effective date of the sanction;~~

~~(iii) the effect of the sanction on the party's participation in the Medicaid program;~~

~~(iv) the medical services party's right to request a post-sanction hearing;~~

~~(v) the earliest date in which the agency will accept a request for reinstatement; and~~

~~(vi) the requirements and procedures for reinstatement.~~

~~(B) After the review of the medical services provider's written response, the agency will make a final administrative decision subject to a post sanction hearing. Should OHCA decide not to impose a sanction, the medical services provider will be notified of the reasons for the decision.~~

~~(d) **Effect of sanction.**~~

~~(1) OHCA must not make payment under its plan for services furnished directly by a suspended or excluded party during the period of suspension or exclusion.~~

~~(2) Any decision to allow payment for up to thirty (30) days is in the total discretion of the Oklahoma Health Care Authority. Payment is available for up to 30 days after the effective date of the suspension for:~~

~~(A) Inpatient hospital services (including inpatient psychiatric hospital services) and skilled nursing facility and intermediate care facility services furnished to a beneficiary who was admitted before the effective date of the suspension; and~~

~~(B) Home health services and hospital care furnished under a plan established before the effective date of the suspension.~~

~~(e) **Post-sanction hearing.** After the effective date of the sanction, the medical services provider is entitled to receive a post sanction hearing. The hearing committee for OHCA will be comprised of three members of the Authority and two other members as appointed. The representative who investigated the case shall not be a representative if an investigation was initiated or completed.~~

~~(1) After request is made for the post-exclusion hearing, a hearing date shall be established. A certified letter will be sent to the provider giving notification of the hearing date and naming the contact person. The contact person will answer procedural questions about the hearing. Ten (10) days prior to the hearing the medical services provider shall submit a brief written statement detailing the evidence which will be presented by the provider at the hearing. Such statement must detail the facts which will be refuted by the provider. The provider may be represented at the informal hearing and the provider may also present testimony himself or herself and have witnesses present.~~

~~(2) At the conclusion of the hearing, a decision will be made by the Hearing Committee. The provider will be notified in writing of the decision within 20 days of the final day of the hearing. The decision letter shall constitute the agency's final decision regarding the matter.~~

~~(f) **Criteria for reinstatement.**~~

~~(1) Upon the request for reinstatement made by the medical services provider, OHCA may consider the following factors to reinstate the provider:~~

~~(A) The number and nature of the program violations and other related offenses;~~

~~(B) The nature and extent of any adverse impact the violations have had on recipients;~~

~~(C) The amount of any damages;~~

~~(D) Whether there are any mitigating circumstances;~~

~~(E) Other facts bearing on the nature and seriousness of the program violations and related offenses;~~

~~(F) Whether the party has been convicted in a federal, state, or local court of other offenses related to participation in the Medicare or Medicaid program which were not considered during the development of the exclusion; and~~

~~(G) Whether the state or local licensing authorities have taken any adverse action against the party for offenses related to participation in the Medicare or Medicaid program which were not considered during the development of the exclusion.~~

~~(2) Regardless of the applicability of one or many of the factors in (1) of this subsection, reinstatement shall not be granted unless it is reasonably certain that the violation(s) that led to the exclusion will not be repeated.~~

317:30-3-20. Appeals procedures (excluding nursing homes and hospitals)

OHCA has established administrative procedures whereby a medical provider may ~~appeal~~ request a review of the decision of the amount paid or the non-payment of medical services provided an eligible recipient. ~~The appeal process is also available to providers who have received notice of sanction from OHCA.~~

~~(1)~~ If the medical provider does not agree with the original payment from the Fiscal Agent, he/she may submit a written explanation as to why the adjustment is being requested and what action is to be taken, a copy of the paid remittance statement and/or detailed explanation of the paid information and a copy of the original claim with the corrections to be made for consideration of additional

payment. The claim should be filed in accordance with the instructions in the OAC 317:30-7 for the type of medical provider involved.

~~(2) If, after full adjudication of the claim, the medical provider is not satisfied with the payment or disagrees with the denial of payment from the Fiscal Agent, he/she may file an appeal with OHCA pursuant to OAC 317:2-1.~~

317:30-3-21. Appeals procedures for nursing facilities

~~If a nursing facility disagrees with the amount allowed for nursing care for an eligible individual, the nursing facility may appeal in the same manner as described for other medical providers see OAC 317:2-1 for grievance procedures and process).~~ Appeal procedures for denial, failure to renew, or termination of a nursing facility agreement are described at OAC ~~317:2-1-2.3(2)~~ 317:2-1-8. The ~~Health~~ Oklahoma State Department of Health, by agreement, continues to be responsible for hearings for licensure and certification as the survey agency.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-25. ~~Oklahoma Foundation for Medical Quality~~ Oklahoma Health Care Authority's Designated Agent

All inpatient services are subject to post-payment utilization review by the ~~Oklahoma Foundation for Medical Quality (OFMQ)~~ OHCA's designated agent. These reviews will be based on severity of illness and intensity of treatment.

(1) It is the policy and intent to allow hospitals and physicians the opportunity to present any and all documentation available to support the medical necessity of an admission and or extended stay of a Medicaid recipient. If ~~the OFMQ~~ OHCA's designated agent, upon their initial review determines the admission should be denied, a notice is issued to the facility and the attending physician advising them of the decision. This notice also advises that a reconsideration request may be submitted in accordance with the Medicare time frame. Additional information submitted with the reconsideration request will be reviewed by ~~the OFMQ~~ OHCA's designated agent who utilizes an independent physician advisor. If the denial decision is upheld through this review of additional information, OHCA is informed. At that point, OHCA sends a letter to the hospital and physician requesting refund of the Medicaid payment previously made on the denied admission.

(2) If the hospital or attending physician did not request reconsideration by ~~the OFMQ~~ OHCA's designated agent, the ~~OFMQ~~ designated agent informs OHCA there has been no request for reconsideration and as a result their initial denial decision is final. OHCA, in turn, sends a letter to the hospital and physician informing of recoupment of Medicaid payment previously made on the denied admission.

(3) If ~~an OFMQ~~ the designated agent's review results in denial and the denial is upheld throughout the ~~appeal~~ review process and refund from the hospital and physician is required, the Medicaid recipient cannot be billed for the denied services.

(4) If a hospital or physician believes a hospital admission or continued stay is not medically necessary and thus not Medicaid compensable but the patient insists on treatment, the patient should be informed that he/she will be personally responsible for all charges. If a Medicaid claim is filed and paid and the service is later denied the patient is not responsible. If a Medicaid claim is not filed the patient can be billed.

PART 3. HOSPITALS

317:30-5-41. Coverage for adults

For persons 21 years of age or older, payment is made to hospitals for services as described in this Section.

(1) **Inpatient hospital services.**

(A) Effective August 1, 2000, all general inpatient hospital services for all persons 21 years of age or older is limited to 24 days per person per state fiscal year (July 1 through June 30). The 24 day limitation applies to both hospital and physician services. No exceptions or extensions will be made to the 24 day inpatient services limitation.

(B) ~~Effective October 1, 1993, inpatient chemical detoxification (alcohol or drugs) for persons age 21 and older is limited to a maximum of five days and subject to post-payment review. No continued stay in inpatient chemical detoxification is allowed.~~ Effective October 1, 2005, claims for inpatient admissions provided on or after October 1st in acute care hospitals will no longer be subject to the 24 days per person per fiscal year limit. Claims will be reimbursed utilizing a Diagnosis Related Groups (DRG) methodology.

~~(C) Effective October 1, 1993, inpatient chemical dependency treatment (alcohol or drugs) for persons age 21 and older is not covered.~~

(~~D~~C) All inpatient services are subject to post-payment utilization review by the Oklahoma Health Care Authority, or its designated agent. These reviews will be based on OHCA's, or its designated agent's, admission criteria on severity of illness and intensity of treatment.

(i) It is the policy and intent to allow hospitals and physicians the opportunity to present any and all documentation available to support the medical necessity of an admission and/or extended stay of a Medicaid recipient. If the OHCA, or its designated agent, upon their initial review determines the admission should be denied, a notice is sent to the facility and the attending physician(s) advising

them of the decision. This notice also advises that a reconsideration request may be submitted within 60 days. Additional information submitted with the reconsideration request will be reviewed by the OHCA, or its designated agent, who utilizes an independent physician advisor. If the denial decision is upheld through this review of additional information, OHCA is informed. At that point, OHCA sends a letter to the hospital and physician requesting refund of the Medicaid payment previously made on the denied admission.

(ii) If the hospital or attending physician did not request reconsideration by the OHCA, or its designated agent, the OHCA, or its designated agent, informs OHCA that there has been no request for reconsideration and as a result their initial denial decision is final. OHCA, in turn, sends a letter to the hospital and physician requesting refund of the amount of Medicaid payment previously made on the denied admission.

(iii) If an OHCA, or its designated agent, review results in denial and the denial is upheld throughout the ~~appeal~~ review process and refund from the hospital and physician is required, the Medicaid recipient cannot be billed for the denied services.

(~~E~~D) If a hospital or physician believes that an acute care hospital admission or continued stay is not medically necessary and thus not Medicaid compensable but the patient insists on treatment, the patient should be informed that he/she will be personally responsible for all charges. If a Medicaid claim is filed and paid and the service is later denied the patient is not responsible. If a Medicaid claim is not filed and paid the patient can be billed.

(~~F~~E) Payment is made to a participating hospital for hospital based physician's services. The hospital must have a Hospital-Based Physician's Contract with OHCA for this method of billing.

(2) **Outpatient hospital services.**

(A) **Emergency hospital services.** Emergency department services are covered. Payment is made at a case rate which includes all non-physician services provided during the visit.

(B) **Level I - Complete Ultrasound.** Payment will be made separately from the total obstetrical care for one complete ultrasound per pregnancy when the patient has been referred to a radiologist or maternal fetal specialist trained in ultrasonography. The patient's record must be documented as to the reason the ultrasound was requested and the components of the ultrasound. The appropriate HCPC code must be used.

(C) **Level II - Targeted Ultrasound.** Payment will be made separately from the total obstetrical care for one medically necessary targeted ultrasound per pregnancy for high risk pregnancies. Documentation as to the medical justification must be made a part of the patient's record. The targeted ultrasound must be performed:

(i) with equipment capable of producing targeted quality evaluations; and

(ii) by an obstetrician certified by the American Board of Obstetrics and Gynecology as a diplomat with special qualifications in maternal fetal medicine or an active candidate for certification in maternal fetal medicine.

(iii) a complete ultrasound code is used if during the procedure it is apparent that a targeted ultrasound is not medically necessary.

(D) **Dialysis.** Payment for dialysis is made at the Medicare allowable facility rate. This rate includes all services which Medicare has established as an integral part of the dialysis procedure, such as routing medical supplies, certain laboratory procedures, oxygen, etc. Payment is made separately for injections of Epoetin Alfa (EPO or Epogen).

(E) **Technical component.** Payment is made for the technical component of outpatient radiation therapy and compensable x-ray procedures.

(F) **Laboratory.** Payment is made for medically necessary outpatient services.

(G) **Blood.** Payment is made for outpatient blood and blood fractions when these products are required for the treatment of a congenital or acquired disease of the blood.

(H) **Ambulance.**

(I) **Pharmacy.**

(J) **Home health care.** Hospital based home health providers must be Medicare certified and have a current Home Health Agency contract with the Oklahoma Health Care Authority.

(i) Payment is made for home health services provided in a patient's residence to all categorically needy individuals.

(ii) Payment is made for a maximum of 36 visits per year per eligible recipient.

(iii) Payment is made for standard medical supplies.

(iv) Payment is made on a rental or purchase basis for equipment and appliances suitable for use in the home.

(v) Non-covered items include sales tax, enteral therapy and nutritional supplies, and electro-spinal orthosis systems (ESO).

(vi) Payment may be made at a statewide procedure based rate. Payment for any combination of skilled and home health aide visits shall not exceed 36 visits per year.

(vii) Payment may be made to home health agencies for prosthetic devices.

(I) Coverage of oxygen includes rental of liquid oxygen systems, gaseous oxygen systems and oxygen concentrators when prior authorized. A completed HCFA-484 must accompany the initial claim for oxygen. Purchase

of oxygen systems may be made where unusual circumstances exist and purchase is considered most appropriate. Refer to the Medical Suppliers Manual for further information.

(II) Payment is made for permanent indwelling catheters, drain bags, insert trays and irrigation trays. Male external catheters are also covered.

(III) Sterile tracheostomy trays are covered.

(IV) Payment is made for colostomy and urostomy bags and accessories.

(V) Payment is made for hyperalimentation, including supplements, supplies and equipment rental in behalf of persons having permanently inoperative internal body organ dysfunction. CC-17 should be submitted to the Medical Authorization Unit. Information regarding the patient's medical condition that necessitates the hyperalimentation and the expected length of treatment, should be attached.

(VI) Payment is made for ventilator equipment and supplies when prior authorized. CC-17 should be submitted to the Medical Authorization Unit.

(VII) Medical supplies, oxygen, and equipment should be billed using appropriate HCPCS codes which are included in the HCPCS Level II Coding Manual.

(K) **Outpatient hospital services, not specifically addressed.** Outpatient hospital services, not specifically addressed, are covered for adults only when prior authorized by the Medical Professional Services Unit of the Oklahoma Health Care Authority.

(L) **Outpatient chemotherapy and radiation therapy.** Payment is made for charges incurred for the administration of chemotherapy for the treatment of malignancies and opportunistic infections. Payment for radiation therapy is limited to the treatment of proven malignancies and benign conditions appropriate for sterotactic radiosurgery (e.g., gamma knife).

(M) **Ambulatory surgery.**

(i) **Definition of Ambulatory Surgical Center.** An ambulatory surgical center (ASC) is a distinct entity that operates exclusively for the purpose of furnishing outpatient surgical services to patients and which enters into an agreement with HCFA to do so. An ASC may be either independent (i.e., not part of a provider of services or any other facility) or may be operated by a hospital (i.e., under the common ownership, licensure or control of a hospital). If an ASC is the latter type it has the option of being covered and certified under Medicare as an ASC, or of being covered as an outpatient hospital facility. In order to be covered as an ASC operated by a hospital, a facility must:

(I) elect to do so, and continue to be so covered unless HCFA determines there is good cause to do otherwise;

(II) be a separately identifiable entity, physically, administratively, and financially independent and distinct from other operations of the hospital; and

(III) meet all the requirements with regard to health and safety, and agree to the assignment, coverage and reimbursement rules applied to independent ASC's.

(ii) **Certification.** In order to be eligible to enter into an agreement with HCFA to be covered as an ASC, a facility must be surveyed and certified as complying with the conditions for coverage for ASC's in 42 CFR 416.39-49.

(N) **Outpatient surgery services.** The covered facility services are defined as those services furnished by an ASC or OHF in connection with a covered surgical procedure.

(i) **Services included in the facility reimbursement rate.** Services included in the facility reimbursement rate are:

(I) Nursing, technical and other related services. These include all services in connection with covered procedures furnished by nurses and technical personnel who are employees of the facility. In addition to the nursing staff, this category would include orderlies and others involved in patient care.

(II) Use of the patient of the facility. This category includes operating and recovery rooms, patient preparation areas, waiting rooms, and other areas used by the patient or offered for use by the patient's relatives in connection with surgical services.

(III) Drugs, biologicals, surgical dressings, supplies, splints, casts, appliances and equipment. This category includes all supplies and equipment commonly furnished by the facility in connection with surgical procedures, including any drugs and biologicals administered while the patient is in the facility. Surgical dressings, other supplies, splints, and casts include those furnished by the facility at the time of surgery. Additional supplies and materials furnished later would generally be furnished as incident to a physician's service and not as a facility service. Supplies include those required for both the patient and facility personnel, i.e., gowns, masks, drapes, hoses, scalpels, etc., whether disposable or reusable.

(IV) Diagnostic or therapeutic items and services directly related to the surgical procedure. Payment to the facility includes items and services furnished by facility staff in connection with covered surgical procedures. These diagnostic tests include but are not limited to

tests such as urinalysis, blood hemoglobin or hematocrit, CBC and fasting blood sugar, etc.

(V) Administrative, recordkeeping, and housekeeping items and services. These include the general administrative functions necessary to run the facility, such as scheduling, cleaning, utilities, rent, etc.

(VI) Blood, blood plasma, platelets, etc. Under normal circumstances, blood and blood products furnished during the course of the procedure will be included in the payment for the facility charge. In cases of patients with congenital or acquired blood disorders, additional payment can be made within the scope of the Authority's Medical Programs.

(VII) Materials for anesthesia. These include the anesthetic and any materials necessary for its administration.

(ii) **Services not included in facility reimbursement rates.** The following services are not included in the facility reimbursement rate:

(I) Physicians' services. This category includes most services performed in the facility which are not considered facility services. The term physicians' services includes any pre/post-operative services, such as office visits, consultations, diagnostic tests, removal of stitches, changing of dressings, or other services which the individual physician usually includes in a set "global" fee for a given surgical procedure.

(II) The sale, lease, or rental of durable medical equipment to facility patients for use in their homes. If the facility furnishes items of DME to patients it should be treated as a DME supplier and these services billed on a separate claim form. Coverage of DME is limited to the scope of the Authority's Medical Programs.

(III) Prosthetic devices. Prosthetic devices, whether implanted, inserted, or otherwise applied by covered surgical procedures are not included in the facility payment. One of the more common prosthesis is intra-ocular lenses (IOL's). Prosthetic devices should be billed as a separate line item using appropriate HCPCS code.

(IV) Ambulance services. If the facility furnishes ambulance services, they are covered separately as ambulance services if otherwise compensable under the Authority's Medical Programs.

(V) Leg, arm, back and neck braces. These items are not included in the facility payment. Payment is limited to the scope of the Authority's Medical Programs.

(VI) Artificial legs, arms, and eyes. This equipment is not considered part of the facility service and is not included in the facility payment rate. Payment is limited to the scope of the Authority's Medical Programs.

(VII) Services of an independent laboratory. Payment for laboratory services is limited to the scope of the Authority's Medical Programs.

(iii) **Reimbursement - facility services.** The facility services are reimbursed according to the group in which the surgical procedure is listed. If more than one surgical procedure is performed at the same setting, reimbursement will be made for only the major procedure. Reimbursement will be made at a state-wide payment rate based on Medicare's established groups ~~as adapted for Medicaid~~.

(iv) **Compensable procedures.** The HCPCS codes identify the compensable procedures and should be used in billing.

(O) **Outpatient hospital services for persons infected with tuberculosis (TB).** Outpatient hospital services are covered for persons infected with tuberculosis. Coverage includes, but may not be limited to, outpatient hospital visits, laboratory work and x-rays. Services to persons infected with TB are not limited to the scope of the Medicaid program; however, prior authorization is required for services that exceed the scope of coverage under Medicaid. Drugs prescribed for the treatment of TB not listed in OAC 317:30-3-46 require prior authorization by the University of Oklahoma College of Pharmacy using form "Petition for TB Related Therapy".

(P) **Mammograms.** Medicaid covers one screening mammogram and one follow-up mammogram every year for women beginning at age 30. Additional follow-up mammograms are covered when medically necessary. A prior authorization by the Medical Professional Services Division of the Oklahoma Health Care Authority is required for additional follow-up mammograms.

(Q) **Treatment/Observation.** Payment is made for the use of a treatment room, or for the room charge associated with outpatient observation services. Observation services must be ordered by a physician or other individual authorized by state law. Observation services are furnished by the hospital on the hospital's premises and include use of the bed and periodic monitoring by hospital staff. Payment is not made for treatment/observation on the same day as an emergency room visit. Observation services are limited to one 24 hour period per incident. Observation services are not covered in addition to an outpatient surgery.

(R) **Clinic charges.** Payment is made for a facility charge for services provided in non-emergency clinics operated by a hospital. This payment does not include the professional charges of the treating physician, nurse practitioner, physician assistant or charges

for diagnostic testing. A facility charge is also allowed when drug and/or blood are administered outpatient.

(3) **Exclusions.** The following are excluded from coverage:

(A) Inpatient diagnostic studies that could be performed on an outpatient basis.

(B) Procedures that result in sterilization which do not meet the guidelines set forth in this Chapter of rules.

(C) Reversal of sterilization procedures for the purposes of conception are not covered.

(D) Medical services considered to be experimental.

(E) Services or any expense incurred for cosmetic surgery ~~including removal of benign skin lesions~~.

(F) Refractions and visual aids.

(G) Payment for the treatment of obesity.

(H) Charges incurred while patient is in a skilled nursing or swing bed.

PART 4. LONG TERM CARE HOSPITALS

317:30-5-62. Coverage by category

(a) **Adults.** There is no coverage for adults.

(b) **Children.** Payment is made to long term care hospitals for subacute medical and rehabilitative services for persons under the age of 21 within the scope of the Authority's Medical Programs, provided the services are reasonable for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member.

(1) **Inpatient services.**

(A) All inpatient services are subject to post-payment utilization review by the Oklahoma Health Care Authority, or its designated agent. These reviews will be based on OHCA's, or its designated agent's, admission criteria on severity of illness and intensity of treatment.

(i) It is the policy and intent of the Oklahoma Health Care Authority to allow hospitals and physicians the opportunity to present any and all documentation available to support the medical necessity of an admission and/or extended stay of a Medicaid recipient. If the OHCA, or its designated agent, upon their initial review determines the admission should be denied, a notice is sent to the facility and the attending physician(s) advising them of the decision. This notice also advises that a reconsideration request may be submitted within 60 days. Additional information submitted with the reconsideration request will be reviewed by the OHCA, or its designated agent, who utilizes an independent physician advisor. If the denial decision is upheld through this review of additional information, OHCA is informed. At that point, OHCA sends a letter to the hospital and physician requesting refund of the Title XIX payment previously made on the denied admission.

(ii) If the hospital or attending physician did not request reconsideration by the OHCA, or its designated agent, the OHCA, or its designated agent, informs OHCA that there has been no request for reconsideration and as a result their initial denial decision is final. OHCA, in turn, sends a letter to the hospital and physician requesting refund of the amount of Title XIX payment previously made on the denied admission.

(iii) If an OHCA, or its designated agent, review results in denial and the denial is upheld throughout the ~~appeal~~ review process and refund from the hospital and physician is required, the Medicaid recipient cannot be billed for the denied services. The reconsideration process outlined in (A) of this paragraph will end on July 1, 2006.

(B) If a hospital or physician believes that an long term care facility admission or continued stay is not medically necessary and thus not Medicaid compensable but the patient insists on treatment, the patient must be informed that he/she will be personally responsible for all charges. If a Medicaid claim is filed and paid and the service is later denied the patient is not responsible. If a Medicaid claim is not filed and paid the patient can be billed.

(2) **Utilization control requirements.**

(A) **Certification and recertification of need for inpatient care.** The certification and recertification of need for inpatient care must be in writing and must be signed and dated by the physician who has knowledge of the case that continued inpatient care is required. The certification and recertification documents for all Medicaid patients must be maintained in the patient's medical records or in a central file at the facility where the patient is or was a resident.

(i) **Certification.** A physician must certify for each applicant or recipient that inpatient services in a long term care hospital were needed. The certification must be made at the time of admission or, if an individual applies for assistance while in a hospital, before the Medicaid agency authorizes payment.

(ii) **Recertification.** A physician must recertify for each applicant or recipient that inpatient services in the long term care hospital are needed. Recertification must be made at least every 60 days after certification.

(B) **Individual written plan of care.**

(i) Before admission to a long term care hospital, an interdisciplinary team including the attending physician or staff physician must establish a written plan of care for each applicant or recipient. The plan of care must include:

(I) Diagnoses, symptoms, complaints, and complications indicating the need for admission,

(II) the acuity level of the individual,

(III) Objectives,

(IV) Any order for medication, treatments, restorative and rehabilitative services, activities, therapies, social services, diet and special procedures recommended for the health and safety of the patient,

(V) Plans for continuing care, including review and modification to the plan of care, and

(VI) Plans for discharge.

(ii) The attending or staff physician and other personnel involved in the recipient's care must review each plan of care at least every 90 days.

(iii) All plans of care and plan of care reviews must be clearly identified as such in the patient's medical records. All must be signed and dated by the physician and other treatment team members in the required review interval.

(iv) The plan of care must document appropriate patient and/or family participation in the development and implementation of the treatment plan.

(C) **Continued stay review.** The facility must complete a continued stay review at least every 90 days.

(i) The methods and criteria for the continued stay review must be contained in the facility utilization review plan.

(ii) Documentation of the continued stay review must be clearly identified as such, signed and dated by the committee chairperson, and must clearly state the continued stay dates and time period approved.

PART 9. LONG TERM CARE FACILITIES

317:30-5-124. Facility licensure

(a) **Nursing home license required.** A nursing facility must meet state nursing home licensing standards to provide, on a regular basis, health related care and services to individuals who do not require hospital care.

(1) In order for long term care facilities to receive payment from the Authority for the provision of nursing care, they must be currently licensed under provisions of Title 63 O.S., Nursing Home Care Act, 1995, Section 1-1901, et seq.

(2) The State Department of Health is responsible for the issuance, renewal, suspension and revocation of a facility's license in addition to the enforcement of the standards. The denial, suspension or revocation of a facility's license is subject to appeal to the State Department of Health. All questions regarding a facility's license should be directed to the State Department of Health.

(b) **Certification survey.** The Oklahoma State Department of Health is designated as the State Survey Agency and is responsible for determining a long term care facility's compliance with Title XIX requirements. The results of the survey are forwarded to the OHCA by the State Survey Agency.

(c) **Certification period.** The certification period of a long term care facility is determined by the State Survey Agency. In the event the facility's deficiencies are found to be of such serious nature as to jeopardize the health and safety of the patient, the State Survey Agency may terminate (de-certify) the facility's certification period and notify the Authority. Upon notification by the State Survey Agency, the Authority will notify the facility by certified letter that the Agreement is being terminated. The letter will indicate the effective date and specify the time period ~~(not more than 30 days)~~ that payment may continue in order to allow orderly relocation of recipient/patients. The decision to terminate a facility's certification by the State Survey Agency is subject to appeal to the State Department of Health. The decision to terminate a facility's Agreement by the Authority (for a reason other than the facility decertification or suspension/revocation of the facility license) is subject to appeal to the Oklahoma Health Care Authority (see OAC ~~317:2-1-2.3~~ 317:2-1-8 for grievance procedures and process).

(d) **Certification with deficiencies.**

(1) When an ICF/MR facility is certified to be in compliance with the Title XIX requirements but has deficiencies which must be corrected, an Agreement may be executed, subject to the facility's resolution of deficiencies according to the approved plan of correction. Following the visit by the State Survey Agency, one of two actions may occur:

(A) The State Survey Agency will notify the Authority that all deficiencies have been corrected or acceptable progress has been made toward correction. The Authority, by letter, will notify the facility of the action and the Agreement may run to the expiration date; or

(B) The State Survey Agency will notify the Authority that some or all of the deficiencies have not been corrected and circumstances require that the **automatic cancellation date** be invoked. The Authority, by certified letter, will notify the facility, owners of the facility and regulatory agencies when the automatic cancellation date is invoked.

(2) The Agreement will terminate as a result of the automatic cancellation date being invoked. In accordance with federal regulations, payment for current residents of the facility can continue for no more than thirty (30) days from the date the automatic cancellation date is invoked, to permit an orderly relocation of patients. Payment cannot be made for patients admitted after the automatic cancellation date is invoked. The decision to invoke a facility's automatic cancellation date is subject to appeal to the State Department of Health.

(e) **Agreement procedures.**

(1) A facility participating in the Medicaid program will be notified by letter from the Authority ~~sixty (60)~~ days prior to the expiration of the existing Agreement. New Agreement forms will be sent to be completed if the

facility wishes to continue participation in the Medicaid Program.

(2) Two copies of the Agreement to Provide Long Term Care Services under the Medicaid Act (Agreement) will be sent to the facility for completion. Both signed copies of the Agreement (signed with original signature only of owner, operator or administrator and properly notarized) must be returned to the OHCA.

(3) When the Agreement is received, approved by the Authority, and the HCFA-1539 has been received from the State Department of Health indicating the facility's certification period, the Agreement will be completed. A copy of the executed Agreement will be returned to the facility where it must be maintained for a period of six years for inspection purposes.

(4) Intermediate care facilities for the mentally retarded wishing to participate in the ICF/MR program must be approved and certified by the State Survey Agency as being in compliance with the ICF/MR regulations (42 CFR 442 Subpart C). It is the responsibility of a facility to request the State Survey Agency perform a survey of compliance with ICF/MR regulations.

(A) When the Authority has received notification of a facility's approval as an ICF/MR and the Title XIX survey of compliance has begun, the Agreement will be sent to the facility for completion.

(B) A facility which has been certified as an ICF/MR and has an Agreement with the Authority will be paid only for recipient/patients who have been approved for ICF/MR level of care. When the facility is originally certified to provide ICF/MR services, payment for recipient/patients currently residing in the facility who are approved for a NF level of care will be made if such care is appropriate to the recipient/patient's needs.

(f) **New facilities.** Any new facility in Oklahoma must receive, from the State Department of Health, a Certificate of Need. When construction of a new facility is completed and licensure and certification is imminent, facilities wishing to participate in the Title XIX Medicaid Program should request, by letter, an Agreement form. When the Authority has received notification from the State Department of Health of the new facility's licensure, the Agreement will be sent to the facility for completion, if not previously sent.

(1) It is the responsibility of the new facility to request the State Survey Agency to perform a survey for Title XIX compliance.

(2) The effective date of the provider Agreement will be subsequent to completion of all requirements for participation in the Medicaid Program. In no case can payment be made for any period prior to the effective date of the facility's certification.

(g) **Change of ownership.** The acquisition of a facility operation, either whole or in part, by lease or purchase, or if a new FEIN is required, constitutes a change of ownership. When such change occurs, it is necessary that a new Agreement be completed between the new owner and the Authority in order that payment can continue for the provision of nursing care. If there is any doubt about whether a change of ownership has occurred, the facility owner should contact the State Department of Health for a final determination.

(1) **License changes due to change of ownership.** State Law prescribes specific requirements regarding the transfer of ownership of a nursing facility from one person to another. When a transfer of ownership is contemplated, the buyer/seller or lessee/lessor must notify the State Department of Health, in writing, of the forthcoming transfer at least thirty (30) days prior to the final transfer and apply for a new facility license.

(2) **Certificate of Need.** A change of ownership is subject to review by the Oklahoma State Department of Health. Any person contemplating the acquisition of a nursing facility should contact Certificate of Need Division of the State Department of Health for further information regarding Certificate of Need requirements.

(A) When a long term care facility changes ownership, federal regulations require automatic assignment of the Agreement to the new owner. An assigned Agreement is subject to all applicable statutes and regulations under which it was originally issued. This includes but is not limited to:

(i) any existing plan of correction,

(ii) any expiration date,

(iii) compliance with applicable health and safety regulations, and

(iv) compliance with any additional requirements imposed by the Medicaid agency.

(B) The new owner must obtain a Certificate of Need as well as a new facility license from the State Department of Health. Pending notification of licensure of the new owner, no changes are made to the Authority's' facility records (i.e., provider number) with the exception of change in administrator or change in name, if applicable.

(C) When notification and licensure from the State Department of Health is received, procedures for transmitting forms to the facility and completing the Agreement, as described in Agreement Procedures for New Facilities, will be followed.

(D) The effective date of a facility's change of ownership is the date specified on the new license issued by the State Department of Health to the new owner or lessee.

317:30-5-131.1. Wage enhancement

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

(1) **"Employee Benefits"** means the benefits an employer provides to an employee which include:

(A) FICA taxes,

(B) Unemployment Compensation Tax,

(C) Worker's Compensation Insurance,

(D) Group health and dental insurance,

(E) Retirement and pensions, and

(F) Other employee benefits (any other benefit that is provided by a majority of the industry).

(2) **"Enhanced"** means the upward adjusted rate as required by Title 63, Section 5022 of Oklahoma Statutes.

(3) **"Enhancement"** means the upward adjusted rate as required by Title 63, Section 5022 of Oklahoma Statute.

(4) **"Regular employee"** means an employee that is paid an hourly/salaried amount for services rendered, however, the facility is not excluded from paying employee benefits.

(5) **"Specified staff"** means the employee positions listed in the Oklahoma Statutes under Section 5022, Title 63 that meet the requirements listed in 42 CFR Section 483.75(e)(1)-(8).

(b) **Enhancement.** Effective May 1, 1997, the OHCA provides a wage and salary enhancement to nursing facilities serving adults and Intermediate Care Facilities for the Mentally Retarded as required by Title 63, Section 5022 of Oklahoma Statutes. The purpose of the wage and salary enhancement is to provide an adjustment to the facility payment rate in order for facilities to reduce turnover and be able to attract and retain qualified personnel. The maximum wage enhancement rates that may be reimbursed to the facilities per diem include:

(1) Three dollars and fifteen cents ($3.15) per patient day for NFs,

(2) Four dollars and twenty cents ($4.20) per patient day for standard private ICFs/MR, and

(3) Five dollars and fifteen cents ($5.15) per patient day for specialized private ICFs/MR.

(c) **Reporting requirements.** Each NF and ICF/MR is required to submit a Nursing and Intermediate Care Facilities Quarterly Wage Enhancement Report (QER) which captures and calculates specified facility expenses. The report must be completed quarterly and returned to OHCA no later than 45 days following the end of each quarter. QERs must be filed for the State Fiscal Year (SFY) which runs from July 1 to June 30. The Oklahoma Health Care Authority reserves the right to recoup all dollars that cannot be accounted for in the absence of a report. The QER is designed to capture and calculate specified facility expenses for quarterly auditing by the OHCA. The report is used to determine whether wage enhancement payments are being distributed among salaries/wages, employee benefits, or both for the employee positions listed in (1) through (8) of this subsection. Furthermore, the OHCA reserves the right to recoup all dollars not spent on salaries, wages, employee benefits, or both for the employee positions. The specified employee positions included on the QER are:

(1) Licensed Practical Nurse (LPN),

(2) Nurse Aide (NA),

(3) Certified Medication Aide (CMA),

(4) Social Service Director (SSD),

(5) Other Social Service Staff (OSSS),

(6) Activities Director (AD),

(7) Other Activities Staff (OAS), and

(8) Therapy Aide Assistant (TAA).

(d) **Timely filing and extension of time.**

(1) **Quarterly reports.** Quarterly reports are required to be filed within 45 days following the end of each quarter. This requirement is rigidly enforced unless approved extensions of time for the filing of the quarterly report is granted by OHCA. Filing extensions not to exceed 15 calendar days may be granted for extraordinary cause only. A failure to present any of the items listed in (A)-(D) of this paragraph will result in a denial of the request for an extension. The extension request ~~shall~~ will be attached to the filing of the report after the request has been granted. For an extension to be granted, the following must occur.

(A) An extension request must be received at the Oklahoma Health Care Authority on or before the 30th day after the end of the quarter.

(B) The extension must be addressed on a form supplied by the Health Care Authority.

(C) The facility must demonstrate there is an extraordinary reason for the need to have an extension. An extraordinary reason is defined in the plain meaning of the word. Therefore, it does not include reasons such as the employee who normally makes these requests was absent, someone at the facility made a mistake and forgot to send the form, the facility failed to get documents to some third party to evaluate the expenditures. An unusual and unforeseen event must be the reason for the extension request.

(D) The facility must not have any extension request granted for a period of two years prior to the current request.

(2) **Failure to file a quarterly report.** If the facility fails to file the quarterly report within the required (or extended) time, the facility is treated as out of compliance and payments made for the quarter in which no report was filed will be subject to a 100% recoupment. The overpayment is recouped in future payments to the facility immediately following the filing deadline for the reporting period. The full overpayment is recovered within a three month period. The Oklahoma Health Care Authority reserves the right to discontinue wage enhancement payments until an acceptable QER (quarterly enhancement report) is received. In addition to the recoupment of payments, the matter of noncompliance is referred to the Legal Division of the OHCA to be considered in connection with the renewal of the facility's contract.

(3) **Ownership changes and fractional quarter report.** Where the ownership or operation of a facility changes hands during the quarter, or where a new operation is commenced, a fractional quarter report is required, covering each period of time the facility was in operation during the quarter.

(A) Fractional quarter reports are linked to the legal requirement that all facility reports be properly filed in order that the overall cost of operation of the facility may be determined.

(B) Upon notice of any change in ownership or management, the OHCA withholds payments from the facility until a fractional quarter report is received and evaluation of payment for the wage enhancement

is conducted. In this case the QER is due within 15 days of the ownership or management change.

(4) **Pay periods and employee benefits reflected in the QER.** Salaries and wages are determined by accruing the payroll to reflect the number of days reported for the month. Unpaid salaries and wages are accrued through the quarter. Any salaries and wages accrued in the previous quarter and paid in the current quarter are excluded. Employee benefits are determined by accruing any benefits paid to coincide with the reporting month. Unpaid employee benefits are accrued through the quarter. Any employee benefits accrued in the previous quarter and paid in the current quarter are excluded. To be included as an allowable wage enhancement expenditure, accrued salaries, wages and benefits must be paid within forty-five (45) days from the end of the reporting quarter.

(5) **Report accuracy.** Errors and/or omissions discovered by the provider after the initial filing/approved extension are not considered grounds for re-opening/revisions of previously filed reports. Furthermore, errors and/or omission discovered by the provider after the initial filing/approved extension can not be carried forward and claimed for future quarterly reporting periods.

(6) **False statements or misrepresentations.** Penalties for false statements or misrepresentations made by or on behalf of the provider are provided at 42 U.S.C. Section 1320a-7b which states, in part, *"(a) Whoever...(2) at any time knowingly and willfully makes or cause to be made any false statement of a material fact for use in determining rights to such benefit or payment... shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with furnishing (by that person) of items or services for which payment is or may be made under this title (42 U.S.C. §1320 et. seq.), be guilty of a felony and upon conviction thereof fined not more than $25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure, or conversion by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than $10,000 or imprisoned for not more than one year, or both."*

(7) **Audits, desk and site reviews.**

(A) Upon receipt of each quarterly report a desk review is performed. During this process, the report is examined to insure it is complete. If any required information is deemed to have been omitted, the report may be returned for completion. Delays that are due to incomplete reports are counted toward the 45 day deadline outlined in (c) of this Section. At that time the mathematical accuracy of all totals and extensions is verified. Census information may be independently verified through other sources. After completion of the desk review, each report is entered into the OHCA's computerized data base. This facilitates the overall evaluation of the industry's costs.

(B) Announced and/or unannounced site reviews are conducted at a time designated by the OHCA. The purpose of site reviews is to verify the information reported on the QER(s) submitted by the facility to the OHCA. Errors and/or omissions discovered by the OHCA upon the completion of a site review is immediately reflected in future payment(s) to the facility. The OHCA makes deficiencies known to the facility within 30 calendar days. A deficiency notice in no way prevents the OHCA from additionally finding any overpayment and adjusting future payments to reflect these findings.

(8) **Appeals process.**

(A) If the desk or site review indicates that a facility has been improperly paid, the OHCA ~~shall~~ will notify the facility that the OHCA will rectify the improper payment in future payments to the facility. Improper payments consist of an overpayment to a facility. The facility may appeal the determination to recoup an alleged overpayment and/or the size of the alleged overpayment, within 20 days of receipt of notice of the improper payment from the OHCA. Such appeals ~~shall~~ will be Level I proceedings heard pursuant to OAC ~~317:2-1-2.1~~ 317:2-1-2(c)(2). The issues on appeals ~~shall~~ will be limited to whether an improper payment occurred and the size of the alleged improper payment. The methodology for determining base period computations ~~shall~~ will not be an issue considered by the administrative law judge.

(B) Certain exceptional circumstances, such as material expenses due to the use of contract employees, overtime expenses paid to direct care staff, or changes within classes of staff may have an effect on the wage enhancement payment and expense results. Facilities may demonstrate and present documentation of the affects of such circumstances before the administrative law judge.

(e) **Methodology for the distribution of payments/adjustments.** The OHCA initiates a two-part process for the distribution and/or recoupment of the wage enhancement.

(1) **Distribution of wage enhancement revenue.** All wage enhancement rates are added to the current facility per diem rate. Facilities receive the maximum wage enhancement rate applicable to each facility type.

(2) **Payment/recoupment of adjustment process.** Initially, all overpayments resulting from the Fourth Quarter of SFY-1997 and the First Quarter of SFY-1998 audits will be deducted from the first month's payment of the Third Quarter of SFY-1998 (January-1998). The Fourth and First Quarter of SFY-1997 and SFY 1998 audit results will be averaged to determine the adjustment. All overpayments as a result of the Second Quarter of SFY-1998 audit will be deducted from the first month's payment of the Fourth Quarter of SFY-1998 (April-1998). Audit results will determine whether or not a facility is utilizing wage enhancement payments that are being added to the facility's per diem rate. When audit results for a given quarter after the Second Quarter of SFY-1998 (October, November, and December 1997) reflect an adjustment, recoupments will be deducted from the facility. Any adjustments calculated will not be recouped during the

quarter in which the calculation is made, rather, they will be recouped during the following quarter. The recoupments, as a result of an adjustment, will not exceed the wage enhancement revenue received for the quarter in which the audit is conducted. Recoupments will be included in the facility's monthly payment and will not exceed the three month period of the quarter in which it is being recouped.

(f) **Methodology for determining base year cost.** The information used to calculate Base Year Cost is taken from actual SFY-1995 cost reports submitted, to the OHCA, by the NFs and ICFs/MR that will be receiving a wage enhancement. A Statewide Average Base Cost is calculated for facilities that did not submit a cost report for SFY-1995. Newly constructed facilities that submit a partial year report are assigned the lower of the Statewide Average Base Cost or actual cost. The process for calculating the Base Year Cost, the Statewide Average Base Cost, and the process for newly constructed facilities is determined as follows.

(1) **Methodology used for determining base year cost.** The methodology for determining the Base Year Cost is determined by the steps listed in (A) through (E) of this paragraph.

(A) Regular employee salaries are determined by adding the salaries of LPNs, NAs, CMAs, SSDs, OSSS, ADs, OAS, and TAAs.

(B) Percentage of benefits allowed are determined by dividing total facility benefits by total facility salaries and wages.

(C) Total expenditures are determined by multiplying the sum of regular employee salaries by a factor of one plus the percentage of benefits allowed in (B) of this subparagraph.

(D) Base Year PPD Costs are determined by dividing total expenditures, in (3) of this subparagraph by total facility patient days. This information is used to determine statewide average base year cost.

(E) Inflated Base Year Costs are determined by multiplying Base Year Cost, in (C) of this subparagraph by the appropriate inflation factors. Base Year Expenditures were adjusted from the midpoint of the base year to the midpoint of the rate year using the moving rate of change forecast in the Data Resources, Inc., (DRI) "HCFA Nursing Home without Capital Market Basket" Index as published for the fourth quarter of calendar year 1995. The OHCA uses this same index (DRI) for subsequent years as it becomes available and is appropriate.

(2) **Methodology used for determining Statewide Average Base Cost.** A Statewide Average Base Cost is calculated for all facilities that did not submit a cost report, to the OHCA, for SFY-1995. The steps listed in (A) through (C) of this paragraph are applied to determine the Base Cost in the absence of actual SFY-1995 cost report information.

(A) Statewide Average Base Year PPD Costs are determined by adding Base Year PPD Cost, calculated in (1)(D) of this subsection, for all facilities that submitted SFY-1995 cost reports, the sum of this calculation is then divided by the number of facilities that submitted cost reports.

(B) Inflated Base Year PPD Costs are determined by multiplying Statewide Base Year PPD Cost by the appropriate inflation factors. Statewide Base Year PPD Cost was adjusted from the midpoint of the base year to the midpoint of the rate year using the moving rate of change forecast in the Data Resources, Inc., (DRI) "HCFA Nursing Home without Capital Market Basket" Index as published for the fourth quarter of calendar year 1995. The OHCA uses this same index (DRI) for subsequent years as it becomes available and is appropriate.

(C) The facilities base cost is determined by multiplying the facilities' current quarter census by the inflated statewide average PPD costs calculated in (B) of this unit.

(g) **Methodology for determining wage enhancement revenue and expenditure results.** The methodology for determining the facilities' wage enhancement revenue and expenditures results are calculated in (1) through (3) of this paragraph.

(1) **Wage enhancement revenue.** Total wage enhancement revenue received by the facility for the current quarter is calculated by multiplying the facilities total paid Medicaid days for the current quarter by the facilities wage enhancement rate. The Oklahoma Health Care Authority adjusts the computations and results when actual paid Medicaid data for the reporting quarter becomes available.

(2) **Wage enhancement expenditures.** Total wage enhancement expenditures are determined in a four step process as described in (A) through (D) of this paragraph.

(A) Total current quarter allowable expenses are calculated. Salaries and wages of specified staff are totaled and added to the applicable percent of customary employee benefits and 100% of the new employee benefits.

(B) Base period expenditures are calculated. An occupancy adjustment factor is applied to the quarterly average base period cost to account for changes in census.

(C) Current quarter wage enhancement expenditures are calculated by subtracting allowable base period expenditures (see (B) of this subparagraph) from total current quarter allowable expenses (see (A) of this subparagraph).

(D) Total wage enhancement expenditures are calculated by adding current quarter wage enhancement expenditures (see (C) of this subparagraph) to prior period wage enhancement expenditures carried forward.

(3) **Wage enhancement revenue and expenditure results.** Wage enhancement revenue and expenditure results are determined by comparing total wage enhancement revenue (see (1) of this paragraph) to total wage enhancement expenditures (see (2)(D) of this paragraph). Revenue exceeding expenses is subject to recoupment.

Expenses exceeding revenue are carried forward to the next reporting period as a prior period wage enhancement expenditure carry over.

317:30-5-131.2. Quality of care fund requirements and report

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

(1) **"Nursing Facility and Intermediate Care Facility for the mentally retarded"** means any home, establishment, or institution or any portion thereof, licensed by the State Department of Health as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes.

(2) **"Quality of Care Fee"** means the fee assessment created for the purpose of quality care enhancements pursuant to Section 2002 of Title 56 of the Oklahoma Statutes upon each nursing facility and intermediate care facility for the mentally retarded licensed in this State.

(3) **"Quality of Care Fund"** means a revolving fund established in the State Treasury pursuant to Section 2002 of Title 56 of the Oklahoma Statutes.

(4) **"Quality of Care Report"** means the monthly report developed by the Oklahoma Health Care Authority to document the staffing ratios, total patient gross receipts, total patient days, and minimum wage compliance for specified staff for each nursing facility and intermediate care facility for the mentally retarded licensed in the State.

(5) **"Staffing ratios"** means the minimum direct-care-staff-to-resident ratios pursuant to Section 1-1925.2 of Title 63 of the Oklahoma Statutes and pursuant to OAC 310:675-1 et seq.

(6) **"Peak In-House Resident Count"** means the maximum number of in-house residents at any point in time during the applicable shift.

(7) **"Staff Hours worked by Shift"** means the number of hours worked during the applicable shift by direct-care staff.

(8) **"Direct-Care Staff"** means any nursing or therapy staff who provides direct, hands-on care to residents in a nursing facility and intermediate care facility for the mentally retarded pursuant to Section 1-1925.2 of Title 63 of the Oklahoma Statues, pursuant to OAC 310:675-1 et seq., and as defined in subsection (c) of this Section.

(9) **"Major Fraction Thereof"** is defined as an additional threshold for direct-care-staff-to-resident ratios at which another direct-care staff person(s) is required due to the peak in-house resident count exceeding one-half of the minimum direct-care-staff-to-resident ratio pursuant to Section 1-1925.2 of Title 63 of the Oklahoma Statutes.

(10) **"Minimum wage"** means the amount paid per hour to specified staff pursuant to Section 5022.1 of Title 63 of the Oklahoma Statutes.

(11) **"Specified staff"** means the employee positions listed in the Oklahoma Statutes under Section 5022.1 of Title 63 and as defined in subsection (d) of this Section.

(12) **"Total Patient Days"** means the monthly patient days that are compensable for the current monthly Quality of Care Report.

(13) **"Total Gross Receipts"** means all cash received in the current Quality of Care Report month for services rendered to all residents in the facility. Receipts should include all Medicaid, Medicare, Private Pay and Insurance including receipts for items not in the normal per diem rate. Charitable contributions received by the nursing facility are not included.

(14) **"Service rate"** means the minimum direct-care-staff-to-resident rate pursuant to Section 1-1925.2 of Title 63 of Oklahoma Statutes and pursuant to OAC 310:675-1 et seq.

(b) **Quality of care fund assessments.**

(1) The Oklahoma Health Care Authority (OHCA) was mandated by the Oklahoma Legislature to assess a monthly service fee to each Licensed Nursing Facility in the State. The fee is assessed on a per patient day basis. The amount of the fee is uniform for each facility type. The fee is determined as six percent (6%) of the average total gross receipts divided by the total days for each facility type.

(2) In determination of the fee for the time period beginning October 1, 2000, a survey was mailed to each licensed nursing facility requesting calendar year 1999 Total Patient Days, Gross Revenues and Contractual Allowances and Discounts. This data is used to determine the amount of fee to be assessed for the period of 10-01-00 through 06-30-01. The fee is determined by totaling the "annualized" gross revenue and dividing by the "annualized" total days of service. "Annualized" means that the surveys received that do not cover the whole year of 1999 are divided by the total number of days that are covered and multiplied by 365.

(3) The fee for subsequent State Fiscal Years is determined by using the monthly gross receipts and census reports for the six month period October 1 through March 31 of the prior fiscal year, annualizing those figures, and then determining the fee as defined above.

(4) Monthly reports of Gross Receipts and Census are included in the monthly Quality of Care Report. The data required includes, but is not limited to, the Total Gross Receipts and Total Patient Days for the current monthly report.

(5) The method of collection is as follows:

(A) The Oklahoma Health Care Authority assesses each facility monthly based on the reported patient days from the Quality of Care Report filed two months prior to the month of the fee assessment billing. As defined in this subsection, the total assessment is the fee times the total days of service. The Oklahoma Health Care Authority notifies the facility of its assessment by the end of the month of the Quality of Care Report submission date.

(B) Payment is due to the Oklahoma Health Care Authority by the 10th of the following month. Failure to pay the amount by the 10th or failure to have the

payment mailing postmarked by the 8th will result in a debt to the State of Oklahoma and is subject to penalties of 10% of the amount and interest of 1.25% per month. The Quality of Care Fee must be submitted no later than the 10th of the month. If the 10th falls upon a holiday or weekend (Saturday-Sunday), the fee is due by 5 p.m. (Central Standard Time) of the following business day (Monday-Friday).

(C) The monthly assessment including applicable penalties and interest must paid regardless of any appeals action requested by the facility. If a provider fails to pay the Authority the assessment within the time frames noted on the second invoice to the provider, the assessment, applicable penalty, and interest will be deducted from the facility's payment. Any change in payment amount resulting from an appeals decision will be adjusted in future payments. Adjustments to prior months' reported amounts for gross receipts or patient days may be made by filing an amended part C of the Quality of Care Report.

(D) The Quality of Care fee assessments excluding penalties and interest are an allowable cost for Oklahoma Health Care Authority Cost Reporting purposes.

(E) The Quality of Care fund contains assessments collected excluding penalties and interest as described in this subsection and any interest attributable to investment of any money in the fund must be deposited in a revolving fund established in the State Treasury. The funds will be used pursuant to Section 2002 of Title 56 of the Oklahoma Statutes.

(c) **Quality of care direct-care-staff-to resident-ratios.**

(1) Effective September 1, 2000, all nursing facilities and intermediate care facilities for the mentally retarded (ICFs/MR) subject to the Nursing Home Care Act, in addition to other state and federal staffing requirements, must maintain the minimum direct-care-staff-to-resident ratios or direct-care service rates as cited in Section 1-1925.2 of Title 63 of the Oklahoma Statutes and pursuant to OAC 310:675-1 et seq.

(2) For purposes of staff-to-resident ratios, direct-care staff are limited to the following employee positions:

(A) Registered Nurse
(B) Licensed Practical Nurse
(C) Nurse Aide
(D) Certified Medication Aide
(E) Qualified Mental Retardation Professional (ICFs/MR only)
(F) Physical Therapist
(G) Occupational Therapist
(H) Respiratory Therapist
(I) Speech Therapist
(J) Therapy Aide/Assistant
(K) Social Services Director/Social Worker
(L) Other Social Services Staff
(M) Activities Director
(N) Other Activities Staff
(O) Combined Social Services/Activities

(3) Prior to September 1, 2003, activity and social services staff who are not providing direct, hands-on care may be included in the direct-care-staff-to-resident ratio in any shift or direct-care service rates. On and after September 1, 2003, such persons are not included in the direct-care-staff-to-resident ratio or direct-care service rates.

(4) In any shift when the direct-care-staff-to-resident ratio computation results in a major fraction thereof, direct-care staff is rounded to the next higher whole number.

(5) To document and report compliance with the provisions of this subsection, nursing facilities and intermediate care facilities for the mentally retarded must submit the monthly Quality of Care Report pursuant to subsection (e) of this Section.

(d) **Quality of care minimum wage for specified staff.** Effective November 1, 2000, all nursing facilities and private intermediate care facilities for the mentally retarded receiving Medicaid payments, in addition to other federal and state regulations, must pay specified staff not less than in the amount of $6.65 per hour. Employee positions included for purposes of minimum wage for specified staff are as follows:

(1) Registered Nurse
(2) Licensed Practical Nurse
(3) Nurse Aide
(4) Certified Medication Aide
(5) Other Social Service Staff
(6) Other Activities Staff
(7) Combined Social Services/Activities
(8) Other Dietary Staff
(9) Housekeeping Supervisor and Staff
(10) Maintenance Supervisor and Staff
(11) Laundry Supervisor and Staff

(e) **Quality of care reports.** Effective September 1, 2000, all nursing facilities and intermediate care facilities for the mentally retarded must submit a monthly report developed by the Oklahoma Health Care Authority, the Quality of Care Report, for the purposes of documenting the extent to which such facilities are compliant with the minimum direct-care-staff-to-resident ratios or direct-care service rates.

(1) The monthly report must be signed by the preparer and by the Owner, authorized Corporate Officer or Administrator of the facility for verification and attestation that the reports were compiled in accordance with this section.

(2) The Owner or authorized Corporate Officer of the facility must retain full accountability for the report's accuracy and completeness regardless of report submission method.

(3) Penalties for false statements or misrepresentation made by or on behalf of the provider are provided at 42 U.S.C. Section 1320a-7b which states, in part, "*Whoever...(2) at any time knowingly and willfully makes or causes to be made any false statement of a material fact for use in determining rights to such benefit or payment...shall (i) in the case of such statement, representation, concealment, failure, or conversion by any person in connection with furnishing (by that person) of items or*

services for which payment is or may be made under this title (42 U.S.C. §1320 et seq.), be guilty of a felony and upon conviction thereof fined not more than $25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure or conversion by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than $10,000 or imprisoned for not more than one year, or both."

(4) The Quality of Care Report must be submitted by 5 p.m. (CST) on the 15th of the following month. If the 15th falls upon a holiday or a weekend (Saturday-Sunday), the report is due by 5 p.m. (CST) of the following business day (Monday - Friday).

(5) The Quality of Care Report will be made available in an electronic version for uniform submission of the required data elements.

(6) Facilities must submit the monthly report either through electronic mail to the Provider Compliance Audits Unit or send the monthly report in disk or paper format by certified mail and pursuant to subsection (e)(14) of this section. The submission date is determined by the date and time recorded through electronic mail or the postmark date and the date recorded on the certified mail receipt.

(7) Should a facility discover an error in its submitted report for the previous month only, the facility must provide to the Provider Compliance Audits Unit written notification with adequate, objective and substantive documentation within five business days following the submission deadline. Any documentation received after the five business day period will not be considered in determining compliance and for reporting purposes by the Oklahoma Health Care Authority.

(8) An initial administrative penalty of $150.00 is imposed upon the facility for incomplete, unauthorized, or non-timely filing of the Quality of Care Report. Additionally, a daily administrative penalty will begin upon the Authority notifying the facility in writing that the report was not complete or not timely submitted as required. The $150.00 daily administrative penalty accrues for each calendar day after the date the notification is received. The penalties are deducted from the Medicaid facility's payment. For 100% private pay facilities, the penalty amount(s) is included and collected in the fee assessment billings process. Imposed penalties for incomplete reports or non-timely filing are not considered for Oklahoma Health Care Authority Cost Reporting purposes.

(9) The Quality of Care Report includes, but is not limited to, information pertaining to the necessary reporting requirements in order to determine the facility's compliance with subsections (b) and (c) of this Section. Such reported information includes, but is not limited to: staffing ratios; peak in-house resident count; staff hours worked by shift; total patient days; total gross receipts; and direct-care service rates.

(10) Audits may be performed to determine compliance pursuant to subsections (b), (c) and (d) of this Section. Announced/unannounced on-site audits of reported information may also be performed.

(11) Direct-care-staff-to-resident information and on-site audit findings pursuant to subsection (c), will be reported to the Oklahoma State Department of Health for their review in order to determine "willful" non-compliance and assess penalties accordingly pursuant to Title 63 Section 1-1912 through Section 1-1917 of the Oklahoma Statutes. The Oklahoma State Department of Health informs the Oklahoma Health Care Authority of all final penalties as required in order to deduct from the Medicaid facility's payment. Imposed penalties are not considered for Oklahoma Health Care Authority Cost Reporting purposes.

(12) If a Medicaid provider is found non-compliant pursuant to subsection (d) based upon a desk audit and/or an on-site audit, for each hour paid to specified staff that does not meet the regulatory minimum wage of $6.65, the facility must reimburse the employee(s) retroactively to meet the regulatory wage for hours worked. Additionally, an administrative penalty of $25.00 is imposed for each non-compliant staff hour worked. For Medicaid facilities, a deduction is made to their payment. Imposed penalties for non-compliance with minimum wage requirements are not considered for Oklahoma Health Care Authority Cost Reporting purposes.

(13) Under OAC 317:2-1-2, Long Term Care facility providers may appeal the administrative penalty described in (b)(5)(B) and (e)(8) and (e)(12) of this section.

(14) Facilities that have been authorized by the Oklahoma State Department of Health (OSDH) to implement flexible staff scheduling must comply with OAC 310:675-1 et seq. The authorized facility are required to complete the flexible staff scheduling section of Part A of the Quality of Care Report. The Owner, authorized Corporate Officer or Administrator of the facility must complete the flexible staff scheduling signature block, acknowledging their OSDH authorization for Flexible Staff Scheduling.

PART 32. SOONERRIDE NON-EMERGENCY TRANSPORTATION

317:30-5-327. SoonerRide non-emergency non-ambulance transportation services for eligible medicaid recipients residing in nursing facilities

(a) **Access to non-emergency non-ambulance transportation through SoonerRide.**

(1) Non-emergency, non-ambulance transportation services are available through the State's SoonerRide Non-Emergency Transportation (NET) program. SoonerRide NET is available on a statewide basis to all eligible Medicaid recipients who reside in nursing facilities.

(2) SoonerRide NET includes non-emergency, non-ambulance transportation for eligible Medicaid recipients residing in nursing facilities to and from eligible Medicaid providers of health care services. Eligible Medicaid providers are providers who have valid Oklahoma Medicaid contracts. The NET must be necessary to access medically necessary Medicaid covered services for which a recipient has available benefits. Additionally, SoonerRide NET may also be provided for eligible Medicaid recipients to providers other than Medicaid providers if the transportation is to access medically necessary services which are Medicaid coverable services.

(3) The use of Medicaid funded transportation for any other purpose is fraudulent activity and subject to criminal prosecution and civil and administrative sanctions.

(4) The SoonerRide broker assures that NET transportation services are provided:

(A) in a manner consistent with the best interest of the Medicaid recipient;

(B) similar in scope and duration state-wide, although there will be some variation based on available resources in a particular geographical area of the state;

(C) appropriate to available services; and

(D) appropriate for the limitations of the recipient.

(b) **Service availability.**

(1) SoonerRide NET is available for covered inpatient hospital care, outpatient hospital care, services from physicians, diagnostic devices, clinic services, eye care and dental care.

(2) SoonerRide NET is available if an eligible Medicaid recipient is being discharged from a hospital to a nursing facility. The nursing facility that the recipient is moving to will be responsible for scheduling the transportation and providing an Attendant for the recipient.

(3) In the event that an eligible Medicaid recipient is voluntarily moving from one nursing facility to another, SoonerRide will provide NET to the new facility. The nursing facility that the recipient is moving from will be responsible for scheduling the transportation and providing an Attendant for the recipient.

(4) In the event that a nursing facility's license is terminated, SoonerRide will provide NET to a new nursing facility. The nursing facility that the recipient is moving from will be responsible for scheduling the NET through SoonerRide and providing an Attendant to accompany the eligible Medicaid recipient.

(c) **Exclusions from SoonerRide NET.** SoonerRide NET excludes:

(1) Transportation of eligible Medicaid recipients residing in nursing facilities to access emergency services.

(2) Transportation of eligible Medicaid recipients residing in nursing facilities by ambulance for any reason.

(3) Transportation of eligible Medicaid recipients residing in nursing facilities whose medical condition requires transport by stretcher.

(4) Transportation of eligible Medicaid recipients residing in nursing facilities to services that are not Medicaid covered or coverable services.

(5) Transportation of eligible Medicaid recipients residing in nursing facilities to services that are not medially necessary.

(d) **Denial of SoonerRide NET services by the SoonerRide broker.**

(1) In addition to the exclusions listed subsection (d) of this Section, the SoonerRide broker may deny NET services if:

(A) The nursing facility refuses to cooperate in determining the recipient's Medicaid eligibility.

(B) The nursing facility refuses to provide the documentation required to determine the medical necessity for NET services.

(C) The recipient or Attendant exhibits uncooperative behavior or misuses/abuses NET services.

(D) The recipient is not ready to board NET transport at the scheduled time or within 10 minutes after the scheduled pick up time.

(E) The nursing facility fails to request a reservation at least three days in advance of a health care appointment without good cause. Good cause is created by factors such as, but not limit to any of the following:

(i) Urgent care.

(ii) Post-surgical and/or medical follow up care specified by a health care provider to occur in fewer than three days.

(iii) Imminent availability of an appointment with a specialist when the next available appointment would require a delay of two weeks or more.

(iv) The result of administrative or technical delay caused by SoonerRide and requiring that an appointment be rescheduled.

(2) Pursuant to Federal law, ~~The~~ SoonerRide ~~Broker must~~ will provide notification in writing to nursing facilities whose recipients have been denied services ~~within two business days of the request~~. This notification must include the specific reason for the denial and the recipient's right to appeal.

(e) **SoonerRide provider network.**

(1) The SoonerRide broker will maintain an adequate number of appropriate network providers to provide non-emergency, non-ambulance transportation services for eligible Medicaid recipients residing in nursing facilities.

(2) If a nursing facility has the capability to provide non-emergency, non-ambulance transportation, the SoonerRide broker may contract with the nursing facility as a NET network provider. The nursing facility must meet the same standards as any other SoonerRide contracted provider for vehicle and driver licensing, safety, training, liability, and ADA regulations. Additionally, when a nursing facility is contracted as a NET provider, the nursing facility cannot limit transportation services to recipients of a specific nursing facility, but must have the same availability as any other contracted network provider except for the transportation of recipients for dialysis services.

(3) SoonerRide may contract with a nursing facility or other transportation provider solely for the non-emergency, non-ambulance transportation of recipients for dialysis services.

(f) **Type of services provided and duties of the SoonerRide driver.**

(1) The SoonerRide NET program is limited to curb-to-curb services. Curb-to-curb services are defined as services for which the vehicle picks up and discharges the passengers at the curb or driveway in front of their place of residence or destination. The SoonerRide NET driver does not provide assistance to passengers along walkways or steps to the door or the residence or other destination or assistance getting into or out of the vehicle. The SoonerRide NET driver will open and close the vehicle doors, load or provide assistance with loading adaptive equipment. Additionally, the SoonerRide NET driver may fasten and unfasten safety restraints when that service is requested by the rider or on behalf of the rider.

(2) If the recipient is traveling by lift van, the SoonerRide NET driver will load and unload the recipient according to established protocols for such procedures that have been approved by the Oklahoma Health Care Authority.

(3) The SoonerRide NET driver will deliver the recipient to the scheduled destination, and is not required to remain with the recipient.

(g) **Scheduling NET services through SoonerRide.**

(1) The nursing facility will schedule SoonerRide NET services for transportation to covered services for nursing facility eligible residents. SoonerRide NET services may be scheduled by calling the toll free SoonerRide number or by faxing a request to SoonerRide.

(2) All NET routine services must be scheduled by advance appointment. Appointments must be made at least three business days in advance of the health care appointment, but may be scheduled up to fourteen business days in advance. Scheduling for recipients with standing appointments may be scheduled for those appointments beyond the 14 days.

(3) NET services for eligible recipients residing in nursing facilities will be scheduled and obtained through the SoonerRide NET program. The nursing facilities will be financially responsible for NET services which are not scheduled for eligible recipients residing in nursing facilities through the SoonerRide program. The nursing facility may not charge the recipient or recipient's family for NET services which were not paid for by SoonerRide because they were not scheduled through SoonerRide in the appropriate manner.

(4) Whenever possible SoonerRide will give consideration for recipients who request NET for routine care and the request is made less than three business days in advance of the appointment. However, such requests for service are not guaranteed and will depend on the available space and resources.

(5) If SoonerRide cannot provide NET for urgent care, the nursing facility may provide the NET transportation and submit proper documentation to SoonerRide for reimbursement. In such cases the nursing facility must attempt to schedule the service through SoonerRide first, or the service must have become necessary during a time that SoonerRide scheduling was unavailable, such as after hours or weekends. For NET for urgent services provided after hours or on weekends, the nursing facility must notify SoonerRide within two business days of the date of service.

(6) Requests for NET Exceptional Transportation must be made through SoonerRide. Exceptional transportation service is denied as non-emergency transportation which is necessary under extraordinary medical circumstances that requires traveling out-of-state for health care treatment not normally provided through in-state health care providers. Exceptional travel does not include direct service providers within 50 miles of the State's border counties who are utilized for routine care.

(h) **Requirement for an attendant to accompany Medicaid eligible recipients who reside in nursing facilities during SoonerRide NET.**

(1) When Medicaid eligible recipients residing in nursing facilities utilize SoonerRide for NET services, the nursing facility must provide an Attendant who will accompany the recipient. For purposes of SoonerRide, an Attendant is defined as an employee of a nursing facility who is provided by and trained by the nursing facility at the nursing facility's expense.

(2) An Attendant must be at least at the level of a Nurses Aide, and must have the appropriate training necessary to provide any and all assistance to the recipient, including physical assistance needed to seat the recipient in the vehicle. The Attendant must have the ability to interface with health care providers as appropriate. An attendant must be of an age of legal majority recognized under State law.

(3) The Attendant will be responsible for any care needed by the recipient during transport and any assistance needed by the recipient to assure the safety of all passengers and the driver of the vehicle. An attendant leaves the vehicle at its destination and remains with the recipient.

(4) When multiple eligible Medicaid recipients who reside in the same nursing facility are being transported to the same provider for health care services the nursing facility may provide one qualified Attendant for each three recipients unless other circumstances indicate the need for additional attendants. Such circumstances might include but are not limited to:

(A) the physical and/or mental status of the recipient,

(B) difficulty in getting the recipient in and out of the vehicle,

(C) the amount of time that a recipient would have to wait unattended, etc.

(5) SoonerRide is not responsible for arranging for an Attendant. The services of the Attendant are not directly reimbursable by the SoonerRide program or the Medicaid

program. The cost for the attendant is included in the Medicaid nursing facility per diem rate.

(i) **Use of an escort to accompany Medicaid eligible recipients who reside in nursing facilities during SoonerRide NET.**

(1) In certain instances a family member or legal guardian may wish to accompany the eligible Medicaid recipient who resides in a nursing facility for health care services. In such instances, the family member or legal guardian may accompany the recipient in place of the Attendant.

(2) An Escort is defined as a family member or legal guardian whose presence is required to assist a recipient during transport and while at the place of treatment. An escort replaces the Attendant who would normally be employed by the nursing facility. An Escort voluntarily accompanies the recipient during transport and leaves the vehicle at its destination and remains with the recipient. An escort must be of an age of legal majority recognized under State law. Only one Escort may accompany a recipient. The Escort must be able to provide any services and assistance necessary to assure the safety of all passengers in the vehicle.

(3) When an Escort wishes to accompany the recipient in place of an Attendant provided by the nursing facility the Escort and the nursing facility must sign a release form stating that an Escort will be traveling with the recipient and performing the services which would normally be performed by the Attendant. This release must be faxed to the SoonerRide business office prior to the date of the transport.

(4) If an Escort is used in place of an Attendant provided by the nursing facility, that Escort cannot be counted as an Escort for any other Medicaid recipients who are traveling in the same vehicle.

(5) SoonerRide is not required to transport any additional family members other than the one family member providing Escort services. In the event that additional family members request transportation, SoonerRide may charge those family members according to SoonerRide policies which have been approved by OHCA.

(6) An Escort is not eligible for direct compensation by the SoonerRide or Medicaid program.

(j) **Transportation for dialysis Services.**

(1) For eligible Medicaid recipients residing in nursing facilities who require NET for dialysis, SoonerRide shall allow one Attendant to accompany a group of up to three dialysis patients when they are being transported for dialysis services. The Attendant will remain with the patients unless the provider of the dialysis treatment and the nursing facility sign a release form stating that the presence of the Attendant is not necessary during the dialysis treatment. This release must be faxed to the SoonerRide business office prior to the date of the dialysis service.

(2) In instances when an Attendant does not remain with the eligible Medicaid recipient during dialysis treatment, SoonerRide is not responsible for transporting the Attendant back to the nursing facility.

(3) In instances when an Attendant does not remain with the eligible Medicaid recipient during dialysis treatment, the nursing facility is responsible for providing an Attendant to accompany the recipient on the return trip from the dialysis center. The nursing facility is also responsible for transporting that Attendant to the dialysis center in order to accompany the recipient on their return trip.

PART 65. MANAGEMENT SERVICES FOR OVER 21

317:30-5-586.1. Prior authorization

(a) Prior authorization of services and requirements to be authorized to provide case management services is mandatory. The provider must request prior authorization from the OHCA or its designated agent. In order for the services to be prior authorized, consumer information requested must be submitted. Consumer information includes but is not limited to the following:

(1) Complete multi-axial DSM IV diagnosis with supportive documentation and mental status examination summary; and

(2) Treatment history; and

(3) Current psycho social information; and

(4) Psychiatric history; and

(5) Fully developed case management service plan, with goals, objectives, and time frames for services.

(b) Medicaid recipients will be considered for prior authorization after receipt of complete and appropriate information submitted by the provider. Based on diagnosis, functional assessment, history and other Medicaid services being received, the Medicaid recipient may be approved to receive case management services. Medicaid recipients who reside in nursing facilities, residential behavior management services, group or foster homes, or ICF/MR's may not receive Medicaid compensable case management services. A Medicaid recipient may be approved for a time frame of one to six months. The OHCA (or its designated agent) will review the request for completeness and appropriateness. The provider will be notified within 24 hours (excluding weekends and holidays) if the request is incomplete, deficient, or inappropriate, and, if so, additional information will be requested. A completed request will be reviewed and processed within 72 working hours. Requests will be reviewed by licensed master's prepared therapists (Licensed Clinical Social Workers, Licensed Professional Counselors, Licensed Marriage and Family Therapists) with experience in behavioral health care, Licensed Registered Nurses with experience in behavioral health care, Psychiatrists (M.D. and D.O.), or Psychologists possessing current state licensure.

(c) A prior authorization decision may be appealed by the ~~provider or~~ consumer if filed within ~~five working~~ 20 days of receipt of the decision. ~~The first level of appeal is to~~ Until July 1, 2006, a provider may request a reconsideration from OHCA's designated agent within five working days of receipt of the decision. ~~If the appeal is not satisfactorily resolved~~

~~during reconsideration, the provider or consumer may submit an appeal to the OHCA through its standard grievance process (refer to OAC 317:2).~~ The designated agent's decision regarding a reconsideration requests is final.

(d) Providers seeking prior authorization will follow OHCA's designated agent's Outpatient Behavioral Health Prior Authorization Manual guidelines for submitting requests on behalf of the Medicaid recipient.

PART 83. RESIDENTIAL BEHAVIOR MANAGEMENT SERVICES IN FOSTER CARE SETTINGS

317:30-5-746. Appeal of Prior Authorization Decision

~~If a denial decision is made, a reconsideration request may be initiated by the resident or the residential foster care agency. A reconsideration request must be made to the OHCA designated agent (the agent who denied the prior authorization) within 10 working days of the denial. The agent will return a decision within 10 working days from the date of receipt of the reconsideration. If the denial decision is upheld, the denial can be appealed to the Health Care Authority within 20 calendar days of the receipt of the notification of the denial by the OHCA designated agent.~~ In the event a member disagrees with the decision by OHCA's designated agent, he/she receives an evidentiary hearing under OAC 317:2-1-2(a). The member's request for such an appeal must commence within 20 calendar days of the initial decision. Providers may access a reconsideration process by OHCA's designated agent, whose decision is final. The provider has two business days of receipt of the decision to request the contractor to reconsider its decision. The designated agent will return a decision within ten working days from the time of receiving the provider's reconsideration request. The reconsideration process will end on July 1, 2006.

[OAR Docket #06-1002; filed 5-22-06]

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

[OAR Docket #06-1006]

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Part 1. General Scope and Administration
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ANALYSIS:
Rules are revised to provide co-payments for Medicare HMO eligible individuals. Payment is made for services offered by the HMO that revert to traditional Medicare type benefits. For Medicare covered services that are not Medicaid covered services, the Medicaid deductible and coinsurance is paid at 100%.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-25. Crossovers (coinsurance and deductible)

(a) **Medicare ~~Part~~ Parts A and B**. Payment is made for Medicare ~~Part A~~ deductible and coinsurance on behalf of eligible individuals.

~~(b) **Medicare Part B.** Payment is made on behalf of eligible individuals for Medicare Part B coinsurance and/or deductible due after payment has been made by Medicare. Assigned claims from Oklahoma providers automatically cross over from the Medicare carrier. Payment is made utilizing the Medicaid allowable for comparable services.~~

(b) **Medicare Advantage Plans.** Payment is made for Medicare HMO co-payments. For services offered by Medicare Advantage Plans that revert to traditional Medicare type benefits, payment is made for coinsurance and deductibles according to subsection (a) in this section.

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

[OAR Docket #06-1011]

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ANALYSIS:
Rules are revised to set out guidelines for electronic medical records and signatures. In accordance with the Uniform Electronic Transaction Act, electronic transactions can be conducted between parties which have agreed to conduct transactions by electronic means. The revised rules establish guidelines to be followed when utilizing electronic methods.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-4.1. Uniform Electronic Transaction Act

The Oklahoma Health Care Authority enacts the provisions of the Uniform Electronic Transaction Act as provided in this Section with the exception to the act as provided in this Section.

(1) **Scope of Act.** The Electronic Transaction Act applies to an electronic record and ~~a~~ an electronic signature created with a record that is generated, sent, communicated, received or stored by the Oklahoma Health Care Authority.

(2) **Use of electronic records and electronic signatures.** The rules regarding electronic records and electronic signatures apply when both parties agree to conduct business ~~electronic~~ electronically. Nothing in these regulations requires parties to conduct business electronically. However, should a party have the capability and desire to conduct business electronically with the Oklahoma Health Care Authority, then the following guidelines must be adhered to:

(A) Only employees designated by the provider's agency may make entries in the client's medical record. All entries in the client's medical record must be dated and authenticated with a method established to identify the author. The identification method may include computer keys, Private/Public Key Infrastructure (PKIs), voice authentication systems that utilize a personal identification number (PIN) and voice authentication, or other codes. Providers must have a process in place to deactivate an employee's access to records upon termination of employment of the designated employee.

(B) When PKIs, computer key/code(s), voice authentication systems or other codes are used, a signed statement must be completed by the agency's employee documenting that the chosen method is under the sole control of the person using it and further demonstrate that:

(i) A list of PKIs, computer key/code(s), voice authentication systems or other codes can be verified;

(ii) All adequate safeguards are maintained to protect against improper or unauthorized use of PKIs, computer keys, or other codes for electronic signatures; and

(iii) Sanctions are in place for improper or unauthorized use of computer key/code(s), PKIs, voice authentication systems or other code types of electronic signatures.

(C) There must be a specific action by the author to indicate that the entry is verified and accurate. Systems requiring an authentication process include but are not limited to:

(i) Computerized systems that require the provider's employee to review the document on-line and indicate that it has been approved by entering a unique computer key/code capable of verification;

(ii) A system in which the provider's employee signs off against a list of entries that must be verified in the member's records;

(iii) A mail system that sends transcripts to the provider's employee for review;

(iv) A postcard identifying and verifying the accuracy of the record(s) signed and returned by the provider's employee; or

(v) A voice authentication system that clearly identifies author by a designated personal identification number or security code.

(D) Auto-authentication systems that authenticate a report prior to the transcription process do not meet the stated requirements and will not be an acceptable method for the authentication process.

(E) Records may be edited by designated administrators within the provider's facility but must be authenticated by the original author. Edits must be in the form of a correcting entry which preserves entries from the original record. Edits must be completed prior to claims submission.

(F) Use of the electronic signature, for clinical documentation, shall be deemed to constitute a signature and will have the same effect as a written signature on the clinical documentation. The section of the electronic record documenting the service provided must be authenticated by the employee or individual who provided the described service.

(G) Any authentication method for electronic signatures must:

(i) be unique to the person using it;

(ii)identify the individual signing the document by name and title;

(iii) be capable of verification, assuring that the documentation cannot be altered after the signature has been affixed;

(iv) be under the sole control of the person using it;

(v) be linked to the data in such a manner that if the data is changed, the signature is invalidated; and

(vi) provide strong and substantial evidence that will make it difficult for the signer to claim that the electronic representation is not valid.

(H) Failure to properly maintain or authenticate medical records (i.e., signature and date entry) may result in the denial or recoupment of Medicaid payments.

(3) ~~**Electronic record**~~ **Record retention for provider medical records.** Providers must retain electronic medical records and have access to the records in accordance with guidelines found at OAC 317:30-3-15.

(4) **Record retention for documents submitted to OHCA electronically.**

(A) The Oklahoma Health Care Authority's system provides that receivers of electronic information may both print and store the electronic information they receive. The Oklahoma Health Care Authority is the custodian of the original electronic record and will retain that record in accordance with a disposition schedule as referenced by the Records Destruction Act. The Oklahoma Health Care Authority will retain an authoritative copy of the transferable record as described in the Electronic Transaction Act that is unique, identifiable and unalterable.

(i) **Manner and format of electronic signature.** The manner and format required by the Oklahoma Health Care Authority will vary dependant upon whether the sender of the document is a recipient (client) or a provider. In the limited case where a provider is a client, the manner and format is dependent upon the function served by the receipt of the record. In the case the function served is a request for services, then the format required is that required by a recipient. In the case the function served is related to payment for services, then the format ~~that is~~ required is that required by a provider.

(ii) **Recipient format requirements.** The Oklahoma Health Care Authority will allow recipients to request Medicaid services electronically. An electronic signature will be authenticated after a validation of the data on the form by another database or databases.

(iii) **Provider format requirements.** The Oklahoma Health Care Authority will permit providers to contract with the Oklahoma Health Care Authority, check and amend claims filed with the Oklahoma Health Care Authority, and file prior authorization requests with the Oklahoma Health Care Authority. Providers with a social security number or federal employer's identification number will be given a ~~"pin"~~ personal identification number (PIN). After using the ~~"pin"~~ PIN to access the database, a ~~personal identification number~~ PIN will be required to transact business electronically.

(B) Providers with the assistance of the Oklahoma Health Care Authority will be required to produce and enforce a security policy that outlines who has access to their data and what transaction employees are permitted to complete as outlined in the policy rules for electronic records and electronic signatures contained in paragraph (2) of this section.

(C) Third Party billers for providers will be permitted to perform electronic transaction as stated in ~~subsection one~~ paragraph (2) only after the provider authorizes access to the provider's ~~personal identification number~~ PIN and a power of attorney by the provider is executed.

(~~4~~5) **Time and place of sending and receipt.** The provisions of the Electronic Transaction Act apply to the time and place of receipt ~~except that in the event~~ with the exception of a power failure, Internet interruption or Internet virus. ~~In this event~~ Should any of the exceptions in this paragraph occur, confirmation is required ~~of either receipt~~ by the receiving party.

(~~5~~6) **Illegal representations of electronic transaction.** Any person who fraudulently represents facts in an electronic transaction, acts without authority, or exceeds their authority to perform ~~a transaction~~ an electronic may be prosecuted under all applicable criminal and civil laws.

317:30-3-15. Record retention

Federal regulations and rules promulgated by the Oklahoma Health Care Authority Board require that the provider retain, for a period of six years, any records necessary to disclose the extent of services the provider, wholly owned supplier, or subcontractor, furnishes to recipients and, upon request, furnish such records to the Secretary of the Department of Health and Human Services. Records in a provider's office must contain adequate documentation of services rendered. Documentation must include the provider's signature and credentials. The provider's signature must be handwritten or electronically submitted if the provider and the Oklahoma Health Care Authority have agreed to conduct transactions by electronic means pursuant to the Uniform Electronic Act. Electronic records and electronic signatures must be in accordance with guidelines found at OAC 317:30-3-4.1. Where reimbursement is based on units of time, it will be necessary that documentation be placed in the ~~patient's~~ member's record as to the beginning and ending times for the service claimed. All records must be legible. Failure to maintain legible records ~~results~~ may result in denial of payment or recoupment of payment for services provided when attempts to obtain transcription of illegible records is unsuccessful or the transcription of illegible records appears to misrepresent the services documented. The provider may, after one year from the date of service(s), microfilm or microfiche the records for the remaining five years, as long as the microfilm or microfiche is of a quality that assures that the records remain legible. Electronic records are acceptable as long as they have a secured signature. Provider (other than individual practitioner) agrees to disclose, upon request, information relating to ownership or control, business transactions and criminal offenses involving any program under Title V of the Child Health Act or Titles, XVIII, XIX, XX, or XXI of the Federal Social Security Act.

[OAR Docket #06-1011; filed 5-22-06]

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

[OAR Docket #06-1001]

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Part 3. General Medical Program Information
317:30-3-47. through 317:30-3-56. [REVOKED]
Part 4. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program/Child Health Services [NEW]
317:30-3-65. through OAC 317:30-3-65.11. [NEW]
Subchapter 5. Individual Providers and Specialties
Part 15. Child Health Centers
317:30-5-195. through 317:30-5-199. [AMENDED]
317:30-5-200. [REVOKED]
317:30-5-201. [AMENDED]
Part 35. Rural Health Clinics
317:30-5-356. [AMENDED]
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Rules are revised to modify the current periodicity schedule to reflect recommendations after consultation with various providers and advocates of child health in accordance with a federal law suit and to update outdated language throughout agency rules.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-47. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program [REVOKED]

~~Payment is made to eligible providers for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services on behalf of eligible individuals under the age of 21.~~

~~(1) The EPSDT program is a comprehensive child health program, designed to ensure the availability of, and access to, required health care resources and help parents and guardians of Medicaid eligible children use these resources. An effective EPSDT program assures that health problems are diagnosed and treated early before they become more complex and their treatment more costly. The physician plays a significant role in educating parents and guardians about all services available through the EPSDT program. The receipt of an identified EPSDT screening makes the Medicaid child eligible for all necessary follow up care that is within the scope of the Medicaid program. Federal regulations require that diagnosis and treatment be provided for conditions identified during a screening whether or not they are covered under the Authority's current program. Such services must be allowable under the federal regulations and must be necessary to ameliorate or correct defects and physical or mental illnesses or conditions and will require prior authorization.~~

~~(2) Federal regulations also require that the State set standards and protocols for each component of EPSDT services. The standards must provide for services at intervals which meet reasonable standards of medical and dental practice. The standards must also provide for EPSDT services at other intervals as medically necessary to determine the existence of certain physical or mental illnesses or conditions.~~

~~(3) Medicaid providers who offer EPSDT screenings must assure that the screenings they provide meet the minimum standards for those services in order to be reimbursed at the level established for EPSDT services.~~

~~(4) An EPSDT screening is considered a comprehensive examination. A provider billing the Medicaid program for an EPSDT screen may not bill any other visits for that patient on that same day. It is expected that the screening provider will perform necessary treatment as part of the screening charge. Additional diagnostic procedures and/or treatments not normally considered part of a comprehensive examination, including tests, immunizations, etc., required at the time of screening may be billed independently from the screening. Some services as set out in this section may require prior authorization.~~

~~(5) To ensure full payment for the EPSDT screening, providers must perform, and document, all necessary components of the screening examination. Documentation of screening services performed must be retained for future review.~~

~~(6) All comprehensive screenings provided to individuals under age 21 must be filed on HCFA 1500 using the appropriate Preventative Medicine procedure code from the latest Current Procedural Terminology Manual (CPT).~~

317:30-3-48. Periodicity schedule [REVOKED]

~~The Oklahoma EPSDT program adopted the recommendations of the American Academy of Pediatrics which include at least the following:~~

~~(1) Six screenings during the first year of life;~~

~~(2) Two screenings in the second year;~~

~~(3) One screening yearly for ages 2 through 5 years;~~

~~(4) One screening every other year for ages 6 through 20 years.~~

317:30-3-49. Initial screening examination [REVOKED]

~~An initial EPSDT screening may be requested by an eligible individual at any time and must be provided without regard to whether the individual's age coincides with the established periodicity schedule.~~

317:30-3-50. Screening components [REVOKED]

~~Comprehensive EPSDT screenings are performed by, or under the supervision of, a certified Medicaid physician, dentist or other provider qualified under State law to furnish primary medical and health services. At a minimum, screening examinations must include all of the following seven components:~~

~~(1) **Comprehensive health and developmental history.** Health and developmental history information may be obtained from the parent or other responsible adult who is familiar with the child's history and include an assessment of both physical and mental health development. Coupled with the physical examination, this includes:~~

~~(A) **Developmental assessment.** Developmental assessment includes a range of activities to determine whether an individual's developmental processes fall within a normal range of achievement according to age group and cultural background. Screening for development assessment is a part of every routine, initial and periodic screening examination. Acquire information on the child's usual functioning as reported by the child, teacher, health professional or other familiar person. Review developmental progress as a component of overall health and well being given the child's age and culture. As appropriate, assess the following elements:~~

~~(i) Gross and fine motor development;~~

~~(ii) Communication skills, language and speech development;~~

~~(iii) Self help, self care skills;~~

~~(iv) Social emotional development;~~

~~(v) Cognitive skills;~~

~~(vi) Visual motor skills;~~

~~(vii) Learning disabilities;~~

~~(viii) Psychological/psychiatric problems;~~

~~(ix) Peer relations; and~~

~~(x) Vocational skills.~~

~~(B) **Assessment of nutritional status.** Nutritional assessment may include preventive treatment and follow-up services including dietary counseling and nutrition education if appropriate. This is accomplished in the basic examination through:~~

~~(i) Questions about dietary practices;~~

~~(ii) Complete physical examination, including an oral dental examination;~~

~~(iii) Height and weight measurements;~~

~~(iv) Laboratory test for iron deficiency; and~~

~~(v) Serum cholesterol screening, if feasible and appropriate.~~

~~(2) **Comprehensive unclothed physical examination.** Comprehensive unclothed physical examination includes the following:~~

~~(A) **Physical growth.** Record and compare height and weight with those considered normal for that age. Record head circumference for children under one year of age. Report height and weight over time on a graphic recording sheet.~~

~~(B) **Unclothed physical inspection.** Check the general appearance of the child to determine overall health status and detect obvious physical defects. Physical inspection includes an examination of all organ systems such as pulmonary, cardiac, and gastrointestinal.~~

~~(3) **Immunizations.** Legislation created the Vaccine for Children Program to be effective October 1, 1994. Vaccines will be provided free of charge to all enrolled providers for Medicaid eligible children. Participating providers may bill for an administration fee to be set by HCFA on a regional basis. They may not refuse to immunize based on inability to pay the administration fee. Medicaid will continue to pay non-participating providers for vaccines and an administration fee of $2.10 until April 1, 1995, when Federal Financial Participation will no longer be available.~~

~~(4) **Appropriate laboratory tests.** Medical judgement is used in determining the applicability of the laboratory tests or analyses to be performed. If any laboratory tests or analyses are medically contraindicated at the time of the screening, they are provided when no longer medically contraindicated. Laboratory tests should only be given when medical judgement determines they are appropriate. However, laboratory tests should not be routinely administered. As appropriate, the following laboratory tests are conducted:~~

~~(A) Anemia test.~~

~~(B) Sickle cell test. If a child has been properly tested once for sickle cell disease, the test need not be repeated.~~

~~(C) Tuberculin test. A tuberculin test is given to every child who has not received one within a year.~~

~~(D) In addition to these tests, there are several other tests to consider. Appropriateness is determined by an individual's age, sex, health history, clinical symptoms and exposure to disease. These may include a urine screening, pinworm slide, urine culture (for girls), serological test, drug dependency screening, stool specimen for parasites, ova, blood and HIV screening.~~

~~(5) **Lead toxicity screening.**~~

~~(A) A lead toxicity screening is required for every Medicaid eligible child at 12 and 24 months of age.~~

~~(B) A lead toxicity screening is also required for any Medicaid eligible child, 36 to 72 months of age who has not previously been screened for lead poisoning.~~

~~(C) Any additional lead toxicity screening will continue to be covered based on a provider"s medical judgment.~~

~~(D) As a result of a class action suit brought against the Health Care Financing Administration (HCFA) on behalf of Medicaid eligible children, the erythrocyte protoporphyrin (EP) test is no longer considered an acceptable test for screening for blood lead poisoning. Blood lead screening must be done whenever a child is determined to be at high risk, regardless of age.~~

~~(E) A blood lead test is required when a child is identified as being at high risk, beginning at six months of age. If the initial blood lead test results are less than (<) 10 micrograms per deciliter (ug/dL), a blood lead test is required at every visit prescribed in the EPSDT periodicity schedule through 72 months of age. If a child between the ages of 36 months and 72 months has not received a blood lead screening test, then that child must receive it immediately, regardless of being determined high/low risk. A blood lead test equal to or greater than (>) 10 ug/dL obtained by capillary specimen (fingerstick) must be confirmed using a venous blood sample. If a child is found to have blood lead levels equal to or greater than (>) 10 ug/dL, providers are to use their professional judgement, with reference to Centers for Disease Control (CDC) guidelines covering patient management and treatment, including follow up blood tests and initiating investigations to the source of lead.~~

~~(F) Physicians are required to ask blood lead risk assessment questions listed in i through viii of this subparagraph whenever a child receives an EPSDT screening. If the answer to any question is positive, a child (regardless of age) is considered high risk for high doses of lead exposure. A blood test must be obtained at the time a child is determined to be high risk. Subsequent verbal risk assessments can change a child's risk category. If as a result of a verbal risk assessment a previously low risk child is recategorized as high risk, that child must be given a blood lead test.~~

~~(i) Does your child live in or regularly visit an old house built before 1960? Was your child's day care center/preschool/babysitter's home built before 1960? Does the house have peeling or chipping paint?~~

~~(ii) Does your child live in a house built before 1960 with recent, ongoing or planned renovation or remodeling?~~

~~(iii) Have any of your children or their playmates had lead poisoning?~~

~~(iv) Does your child frequently come into contact with an adult who works with lead? For example, construction, welding, pottery?~~

~~(v) Does your child live near a lead smelter, battery recycling plant, or other industry likely to release lead?~~

~~(vi) Do you give your child any home or folk remedies which may contain lead?~~

~~(vii) Does your child live near a heavily travelled major highway where soil and dust may be contaminated with lead?~~

~~(viii) Does your home's plumbing have lead pipes or copper with lead solder joints?~~

~~(G) If answers to all questions listed in F, (i) through (viii) of this subparagraph are negative, a child is considered low risk for high doses of lead exposure, but must receive blood lead test at 12 and 24 months of age, regardless of risk.~~

~~(H) If the answer to any question listed in F, (i) through (viii) of this subparagraph is positive, a child is considered high risk for doses of lead exposure. A blood test must be done at the time a child is considered to be high risk.~~

~~(I) Subsequent verbal risk assessments can change a child's risk category. If as a result of a verbal risk assessment a previously low risk child is recategorized as high risk, the child must be given a blood lead test.~~

~~(6) **Health education.** Health education is a required component of screening services and includes anticipatory guidance. At the outset, the physical and dental assessment, or screening, gives the initial context for providing health education. Health education and counseling to both parents, guardians or children is required. It is designed to assist in understanding expectations of the child's development and provide information about the benefits of healthy lifestyles and practices as well as accident and disease prevention.~~

~~(7) **Vision and hearing screens.** Vision and hearing services are subject to their own periodicity schedules. However, age-appropriate vision and hearing assessments may be performed as a part of the screening.~~

~~(8) **Dental screening services.** An oral dental examination may be included in the screening and as a part of the nutritional status assessment. Federal regulations require a direct dental referral for every child in accordance with the periodicity schedule and at other intervals as medically necessary. Therefore, when an oral examination is done at the time of the screening, the child may be referred directly to a dentist for further screening and/or treatment.~~

317:30-3-51. Diagnosis and treatment [REVOKED]

~~When a screening indicates the need for further evaluation of an individual's health, a referral for diagnostic studies and follow-up must be provided without delay. Diagnostic services are defined as those services necessary to fully evaluate defects, physical or mental illnesses or conditions discovered by the screening.~~

~~(1) Health care, treatment, or other measures to correct or ameliorate defects, physical or mental illnesses or conditions must also be provided and will be covered by the EPSDT Program. The defects, illnesses and conditions must have been discovered during the screening or shown to have increased in severity.~~

~~(2) Services, deemed medically necessary and allowable under federal Medicaid regulations, may be covered by the EPSDT program even though those services may not be part of the Oklahoma Health Care Authority Medicaid program. However, such services must be prior authorized and must be allowable under federal Medicaid regulations.~~

~~(3) Federal Medicaid regulations also require the State to make the determination as to whether the service is necessary and do not require the provision of any items or services that the State determines are not safe and effective or which are considered experimental.~~

317:30-3-52. Vision services [REVOKED]

~~At a minimum, vision services include diagnosis and treatment for defects in vision, including eyeglasses once each 12 months. In addition, payment is made for glasses for children with congenital aphakia or following cataract removal. (Refer to OAC 317:30-5-2(b) (5)for amount, duration and scope.)~~

317:30-3-53. Dental services [REVOKED]

~~At a minimum, dental services include relief of pain and infection; restoration of teeth and maintenance of dental health; and/or oral prophylaxis one each 12 months. Dental care includes emergency and preventive services and therapeutic services for dental disease which, if left untreated, may become acute dental problems or may cause irreversible damage to the teeth or supporting structures. Other dental services include inpatient services in an eligible participating hospital, amalgam and composite restorations, pulpotomies, chrome steel crowns, anterior root canals, pulpectomies, band and loop space maintainers, cement bases, acrylic flippers and lingual arch bars; other restoration, repair and/or replacement of dental defects after the treatment plan submitted by a dentist has been authorized. (Refer to OAC 317:30-5-695 for amount, duration and scope.)~~

317:30-3-54. Hearing services [REVOKED]

~~(a) At a minimum, hearing services include hearing evaluation once every 12 months, hearing aid evaluation if indicated and purchase of a hearing aid when prescribed by a state licensed audiologist who:~~

~~(1) holds a certificate of clinical competence from the American Speech and Hearing Association; or~~

~~(2) has completed the equivalent educational requirements and work experience necessary for the certificate; or~~

~~(3) has completed the academic program and is acquiring supervised work experience necessary for the certificate; and~~

~~(4) holds a contract with OHCA to perform such an evaluation and is preauthorized.~~

~~(b) Interperiodic hearing examinations are allowed at intervals outside the periodicity schedule when a hearing condition is suspected. (Refer to OAC 317:30-5-676 for amount, duration and scope.)~~

317:30-3-55. Periodic and interperiodic screening examinations [REVOKED]

~~(a) **Periodic screening examination.** Periodic screening must be provided in accordance with the periodicity schedule following the initial screening.~~

~~(b) **Interperiodic screening examination.** Interperiodic screenings must be provided when medically necessary to determine the existence of suspected physical or mental illnesses or conditions. This may include physical, mental or dental conditions. The determination of whether an interperiodic screen is medically necessary may be made by a health, developmental or educational professional who comes into contact with the child outside of the formal health care system. Claims for interperiodic screenings must be billed under the appropriate CPT codes on form HCFA-1500 for services that are determined medically necessary.~~

317:30-3-56. Partial screening examination [REVOKED]

~~A partial screening may be paid if the provider cannot provide all of the minimum components of the screening. Use Procedure Code W4590 to bill for partial screening.~~

PART 4. EARLY AND PERIODIC SCREENING, DIAGNOSIS AND TREATMENT (EPSDT) PROGRAM/CHILD HEALTH SERVICES

317:30-3-65. Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program/Child Health Services

Payment is made to eligible providers for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services on behalf of eligible individuals under the age of 21.

(1) The EPSDT program is a comprehensive child-health program, designed to ensure the availability of, and access to, required health care resources and help parents and guardians of Medicaid-eligible children use these resources. An effective EPSDT program assures that health problems are diagnosed and treated early before they become more complex and their treatment more costly. The physician plays a significant role in educating parents and guardians about all services available through the EPSDT program. The receipt of an identified EPSDT screening makes the Medicaid child eligible for all necessary follow-up care that is within the scope of the Medicaid program. Federal regulations require that diagnosis and treatment be provided for conditions identified during a screening whether or not they are covered under the Authority's current program. Such services must be allowable under federal regulations and must be necessary to ameliorate or correct defects and physical or behavioral health illnesses or conditions and will require prior authorization.

(2) Federal regulations also require that the State set standards and protocols for each component of EPSDT services. The standards must provide for services at intervals which meet reasonable standards of medical and dental practice. The standards must also provide for EPSDT services at other intervals as medically necessary to determine the existence of certain physical or behavioral health illnesses or conditions.

(3) Medicaid providers who perform EPSDT screenings must assure that the screenings they provide meet the minimum standards established by the OHCA and outlined at OAC 317:30-3-65.1 in order to be reimbursed at the level established for EPSDT services.

(4) An EPSDT screening is considered a comprehensive examination. A provider billing the Medicaid program for an EPSDT screen may not bill any other Evaluation and Management Current Procedure Terminology (CPT) code for that patient on that same day. It is expected that the screening provider will perform necessary treatment as part of the screening charge. However, there may be other additional diagnostic procedures or treatments not normally considered part of a comprehensive examination, including diagnostic tests and administration of immunizations, required at the time of screening. Additional diagnostic procedures or treatments may be billed independently from the screening. Some services as set out in this section may require prior authorization.

(5) For an EPSDT screening to be considered a completed reimbursable service, providers must perform, and document, all required components of the screening examination. Documentation of screening services performed must be retained for future review.

(6) All comprehensive screenings provided to individuals under age 21 must be filed on HCFA-1500 using the appropriate preventive medicine procedure code or an appropriate Evaluation and Management code from the Current Procedural Terminology Manual (CPT) accompanied by the appropriate "V" diagnosis code.

317:30-3-65.1. Minimum required screenings

(a) The Oklahoma EPSDT program has established and adopted a periodicity schedule based on recommendations from recognized medical and dental organizations and individuals involved in child health care in Oklahoma.

(b) A complete description of services to be provided at each screening interval is outlined in the Periodicity Schedule found at OAC 317:30-3-65.2.

317:30-3-65.2. Periodicity schedule

The OHCA requires that physicians providing reimbursable EPSDT Screens adopt and utilize the version of the Oklahoma Health Care Authority EPDST Periodicity schedule. Providers are allowed and encouraged to provide optional screenings as indicated and/or as recommended in the guidelines established by the American Academy of Pediatrics. Optional screenings may be completed at one week, fifteen months, and eleven, thirteen, fifteen, seventeen and nineteen years of age. At a minimum, practitioners are required to perform the OHCA recommended elements for each age related visit as follows:

(1) Each EPSDT visit whether optional or required will consist, at a minimum, of a history of occurrences since the last screening visit (Health History), measurements of height, weight and head circumference (as appropriate through age two), an age appropriate developmental and a behavioral screening as well as a complete unclothed physical exam. Immunizations are to be checked and provided as needed according to the Advisory Committee on Immunization Practices (ACIP) schedule and any appropriate laboratory testing should be performed. Additionally, age appropriate anticipatory guidance is also required to be given to parents in the areas of injury prevention, violence prevention, sleep positioning (through 6 months of age), and nutritional counseling. Beginning at age 4 and with each subsequent visit, a Body Mass Index (BMI) is to be calculated and charted. A tuberculin test is required to be given to any at risk child from the ages of 12 months to age 20 years and a cholesterol screening is required to be given to at risk children between the ages of 2 years and 20 years. Beginning at age 12, at risk female children should also be given a pelvic exam and all at risk children should be given STD screening. Dental screens begin at the first sign of tooth eruption by the primary care provider and with each subsequent visit to determine if the children needs a referral to a dental provider. In addition to the elements listed above, each compensable EPSDT visit also requires the following as designated by age:

(2) Newborn visit. The newborn visit occurs inpatient. The visit consists, at a minimum, of a prenatal history and physical examination of all body systems. The practitioner also conducts a screening of vision that consists of an assessment of the anatomy of the lids, alignment of the eyes and clarity of the ocular media with particular attention to documenting the presence of a normal red reflex. A newborn hearing screen is required. The Heb B Immunizations is required. A Hereditary/Metabolic Screening is required between birth and one month.

(3) One week visit. One week visit occurs approximately one week from the hospital discharge date. A hearing screen is required to be done if the child failed the newborn hearing screen or if there are parental concerns or any other indicator of potential problems. A Hereditary/Metabolic Screening is required between birth and one month. This is an optional visit for infants who were discharged early or have other health concerns.

(4) By one month old visit. The practitioner conducts a screening of vision that consists of a Red reflex and external appearance exam. A hearing screen is required if there are parental concerns or any other indicator of potential problems. A Hereditary/Metabolic Screening is required between birth and one month.

(5) Two month old visit. The practitioner conducts a screening of vision that consists of a Red reflex and external appearance exam. A hearing screen is required if there are parental concerns or any other indicator of potential problems.

(6) Four month old visit. The practitioner conducts a screening of vision that consists of a Red reflex and external appearance exam. A hearing screen is required if there are parental concerns or any other indicator of potential problems.

(7) Six month old visit. The practitioner conducts a screening of vision that consists of a Red reflex and external appearance exam and evaluation of ocular alignment with a corneal light reflex test. A hearing screen is required to be done if there are parental concerns or any other indicator of potential problems.

(8) Nine month old visit. The practitioner conducts a screening of vision between the ages of nine and twelve months (if the vision screening is done at this visit, it need not be repeated at the twelve month visit) that consists of a Red reflex and external appearance exam and evaluation of ocular alignment with a corneal light reflex test. A hearing screen is required to be done if there are parental concerns or any other indicator of potential problems. A blood lead test may be provided as early as nine months but is required at 12 and 24 months. A hematocrit or hemoglobin test is required to be performed between the ages of nine months and three years.

(9) One year old visit. The practitioner conducts a screening of vision between the ages of nine and twelve months (if the vision screening was deferred at the nine month visit, it must be provided at the twelve month visit) that consists of a Red reflex and external appearance exam and evaluation of ocular alignment with a corneal light reflex test. A hearing screen is required to be done if there are parental concerns or any other indicator of potential problems. A blood lead test may be provided as early as nine months but is required at 12 and 24 months. A hematocrit or hemoglobin test is required to be performed between the ages of nine months and three years and a tuberculin test is required to be given to any at risk child from the ages of 12 months to age 20 years.

(10) Fifteen month old visit. A hearing screen is required to be done if there are parental concerns or any other indicator of potential problems. A hematocrit or hemoglobin test is required to be performed between the ages of nine months and three years. A tuberculin test is required to be given to any at risk child from the ages of 12 months to age 20 years. This is an optional visit.

(11) Eighteen month old visit. A hearing screen is required to be done if there are parental concerns or any

other indicator of potential problems. A hematocrit or hemoglobin test is required to be performed between the ages of nine months and three years. A tuberculin test is required to be given to any at risk child from the ages of 12 months to age 20 years.

(12) Two years old visit. A hearing screen should be done if there are parental concerns or any other indicator of potential problems. A blood lead test may be provided as early as nine months but is required at 12 and 24 months. A hematocrit or hemoglobin test is required to be performed between the ages of nine months and three years.

(13) Three years old visit. The practitioner conducts one vision screening between the ages three to five. The screening consists of an alignment and an acuity test e.g., Allen Cards, Snellen chart or HOTV Test in each eye. A hearing screen, subjective by history, is done if there are parental concerns or any other indicator of potential problems. A hematocrit or hemoglobin test is required to be performed between the ages of nine months and three years.

(14) Four years old visit. The practitioner conducts one vision screening between the ages three to five. The screening consists of an alignment and an acuity test e.g., Allen Cards, Snellen chart or HOTV Test in each eye. A hearing screen should be done.

(15) Five years old visit. The practitioner conducts one vision screening between the ages three to five. The screening consists of an alignment and an acuity test e.g., Allen Cards, Snellen chart or HOTV Test in each eye. A hearing screen is required to be done if the screening was not provided in the school.

(16) Six years old visit. The practitioner conducts a screening of vision that consists of visual acuity testing. An objective hearing screen is required if the screening was not provided in the school.

(17) Eight years old visit. The practitioner conducts a screening of vision that consists of visual acuity testing. An objective hearing screen is required if the screening was not provided in the school.

(18) Ten years old visit. The practitioner conducts a screening of vision that consists of visual acuity testing. An objective hearing screen should be done if the screening was not provided in the school.

(19) Eleven and thirteen years old visit. The practitioner conducts one screening of vision that consists of visual acuity testing between the ages of 11 through 18. Hearing screens are subjective by history. A hematocrit or hemoglobin test and a urinalysis test are required to be done once from ages 11 through age 20 on menstruating females. These visits are optional visits.

(20) Twelve years old visit. The practitioner conducts one screening of vision that consists of visual acuity testing between the ages of 11 through 18 (all other years are subjective by history). Hearing screens are subjective by history. A hematocrit or hemoglobin test and a urinalysis test are required to be done once from ages 11 through age 20 on menstruating females.

(21) Fourteen, sixteen, eighteen, and twenty years old visit. The practitioner conducts one screening of vision that consists of visual acuity testing between the ages of 11 through 18. Hearing screenings are subjective by history.

(22) Fifteen, seventeen and nineteen years old visit. The practitioner conducts one vision screening that consists of visual acuity testing between the ages of 11 through 18. Hearing screenings are subjective by history. These are all optional visits.

317:30-3-65.3. Initial screening examination

An initial EPSDT screening may be requested by an eligible individual at any time and must be provided without regard to whether the individual's age coincides with the established periodicity schedule.

317:30-3-65.4. Screening components

Comprehensive EPSDT screenings are performed by, or under the supervision of, a certified Medicaid physician, dentist or other provider qualified under State law to furnish primary medical and health services. At a minimum, screening examinations must include, but not be limited to, the following components:

(1) **Comprehensive health and developmental history.** Health and developmental history information may be obtained from the parent or other responsible adult who is familiar with the child's history and include an assessment of both physical and mental health development. Coupled with the physical examination, this includes:

(A) **Developmental assessment.** Developmental assessment includes a range of activities to determine whether an individual's developmental processes fall within a normal range of achievement according to age group and cultural background. Screening for development assessment is a part of every routine, initial and periodic screening examination. Acquire information on the child's usual functioning as reported by the child, teacher, health professional or other familiar person. Review developmental progress as a component of overall health and well-being given the child's age and culture. As appropriate, assess the following elements:

(i) Gross and fine motor development;

(ii) Communication skills, language and speech development;

(iii) Self-help, self-care skills;

(iv) Social-emotional development;

(v) Cognitive skills;

(vi) Visual-motor skills;

(vii) Learning disabilities;

(viii) Psychological/psychiatric problems;

(ix) Peer relations; and

(x) Vocational skills.

(B) **Assessment of nutritional status.** Nutritional assessment may include preventive treatment and follow-up services including dietary counseling and nutrition education if appropriate. This is accomplished in the basic examination through:

(i) Questions about dietary practices;

(ii) Complete physical examination, including an oral dental examination;

(iii) Height and weight measurements;

(iv) Laboratory test for iron deficiency; and

(v) Serum cholesterol screening, if feasible and appropriate.

(2) **Comprehensive unclothed physical examination.** Comprehensive unclothed physical examination includes the following:

(A) **Physical growth.** Record and compare height and weight with those considered normal for that age. Record head circumference for children under one year of age. Report height and weight over time on a graphic recording sheet.

(B) **Unclothed physical inspection.** Check the general appearance of the child to determine overall health status and detect obvious physical defects. Physical inspection includes an examination of all organ systems such as pulmonary, cardiac, and gastrointestinal.

(3) **Immunizations.** Legislation created the Vaccine for Children Program to be effective October 1, 1994. Vaccines will be provided free of charge to all enrolled providers for Medicaid eligible children. Participating providers may bill for an administration fee to be set by CMS, formerly known as HCFA on a regional basis. They may not refuse to immunize based on inability to pay the administration fee.

(4) **Appropriate laboratory tests.** A blood lead screening test (by either finger stick or venipuncture) must be performed between the ages of nine and 12 months and at 24 months. A blood lead test is required for any child up to age 72 months who had not been previously screened. A blood lead test equal or greater than 10ug/dL obtained by capillary specimen (fingerstick) must be confirmed using a venous blood sample. If a child is found to have blood lead levels equal to or greater than 10 ug/dL, providers are to use their professional judgment, with reference to Centers for Disease Control (CDC) guidelines covering patient management and treatment, including follow-up blood tests and initiating investigations to the source of lead. Medical judgment is used in determining the applicability of all other laboratory tests or analyses to be performed unless otherwise indicated on the periodicity schedule. If any laboratory tests or analyses are medically contraindicated at the time of the screening, they are provided when no longer medically contraindicated. Laboratory tests should only be given when medical judgment determines they are appropriate. However, laboratory tests should not be routinely administered. General procedures including immunizations and lab tests, such as blood lead, are outlined in the periodicity schedule found at OAC 317:30-3-65.2.

(5) **Health education.** Health education is a required component of screening services and includes anticipatory guidance. At the outset, the physical and dental assessment, or screening, gives the initial context for providing health education. Health education and counseling to parents, guardians or children is required. It is designed to assist in understanding expectations of the child's development and provide information about the benefits of healthy lifestyles and practices as well as accident and disease prevention.

(6) **Vision and hearing screens.** Vision and hearing services are subject to their own periodicity schedules. However, age-appropriate vision and hearing assessments may be performed as a part of the screening as outlined in the periodicity schedule found at OAC 317:30-3-65.7 and 317:30-3-65.9.

(7) **Dental screening services.** An oral dental examination may be included in the screening and as a part of the nutritional status assessment. Federal regulations require a direct dental referral for every child in accordance with the periodicity schedule and at other intervals as medically necessary. Therefore, when an oral examination is done at the time of the screening, the child may be referred directly to a dentist for further screening and/or treatment. Specific dental services are outlined in OAC 317:30-3-65.8.

(8) **Child abuse.** Instances of child abuse and/or neglect discovered through screenings and regular examinations are to be reported in accordance with State Law. Title 21, Oklahoma Statutes, Section 846, as amended, states in part: "Every physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents, and interns, examining, attending, or treating a child under the age of 18 years and every registered nurse examining, attending or treating such a child in the absence of a physician or surgeon, and every other person having reason to believe that a child under the age of 18 years has had physical injury or injuries inflected upon him or her by other than accidental means where the injury appears to have been caused as a result of physical abuse or neglect, shall report the matter promptly to the county office of the Department of Human Services in the county wherein the suspected injury occurred. Providing it shall be a misdemeanor for any person to knowingly and willfully fail to promptly report an incident as provided above". Persons reporting such incidents of abuse and/or neglect in accordance with the law are exempt from prosecution in civil or criminal suits that might be brought solely as a result of the filing of the report.

317:30-3-65.5. Diagnosis and treatment

When a screening indicates the need for further evaluation of an individual's health, a referral for appropriate diagnostic studies or treatment services must be provided without delay. Diagnostic services are defined as those services necessary to

fully evaluate defects, physical or behavioral health illnesses or conditions discovered by the screening.

(1) Health care, treatment, or other measures to correct or ameliorate defects, physical or mental illnesses or conditions must also be provided and will be covered by the EPSDT/OHCA Child Health Program as medically necessary. The defects, illnesses and conditions must have been discovered during the screening or shown to have increased in severity.

(2) Services, deemed medically necessary and allowable under federal Medicaid regulations, may be covered by the EPSDT/OHCA Child Health program even though those services may not be part of the Oklahoma Health Care Authority Medicaid program. However, such services must be prior authorized and must be allowable under federal Medicaid regulations.

(3) Federal Medicaid regulations also require the State to make the determination as to whether the service is medically necessary and do not require the provision of any items or services that the State determines are not safe and effective or which are considered experimental.

317:30-3-65.6. Documentation of Services

Records for EPSDT screens must contain adequate documentation of services rendered. Such documentation must include the physicians's signature or identifiable initials for every prescription or treatment. Documentation of records may be completed manually or electronically in accordance with guidelines found at OAC 317:30-3-15. Each required element of the age specific screening must be documented with a description of any noted problem, anomaly or concern. In addition, a plan for following necessary diagnostic evaluations, procedures and treatments, must be documented. The OHCA Child Health Provider Manual contains forms that may be used for this purpose.

317:30-3-65.7. Vision services

(a) At a minimum, vision services include diagnosis and treatment for defects in vision, including eyeglasses once each 12 months. In addition, payment is made for glasses for children with congenital aphakia or following cataract removal (refer to OAC 317:30-5-2(b)(5) for amount, duration and scope). The following schedule outlines the services required for vision services adopted by the OHCA.

(1) Each newborn should have an assessment of the anatomy of the lids, alignment of the eyes and clarity of the ocular media with particular attention to documenting the presence of a normal red reflex. The history should document either a normal birth or other condition such as prematurity.

(2) Red reflex and external appearance should be repeated and recorded on infants between one and four months of age.

(3) At six months of age, repeat red reflex and external exam and add an evaluation of ocular alignment with a corneal light reflex test.

(4) One screen should occur between nine and 12 months to mirror the six month screening.

(5) One screening from age three to five including alignment and an acuity test e.g., Allen Cards, Snellen chart or HOTV Test in each eye.

(6) Objective visual acuity testing should be provided at ages five through ten, and once during ages 11 through 18. All other years are subjective by history.

(b) Interperiodic vision examinations are allowed at intervals outside the periodicity schedule when a vision condition is suspected.

317:30-3-65.8. Dental services

(a) At a minimum, dental services include relief of pain and infection; limited restoration of teeth and maintenance of dental health; and oral prophylaxis every 184 days. Dental care includes emergency and preventive services and therapeutic services for dental disease which, if left untreated, may become acute dental problems or may cause irreversible damage to the teeth or supporting structures. Other dental services include inpatient services in an eligible participating hospital, amalgam anterior and composite restorations, pulpotomies, chrome steel crowns, anterior root canals, pulpectomies, band and loop space maintainers, cement bases, acrylic partial and lingual arch bars; other restoration, repair and/or replacement of dental defects after the treatment plan submitted by a dentist has been authorized (refer to OAC 317:30-5-696(3) for amount, duration and scope).

(b) Dental screens should begin at the first sign of tooth eruption by the primary care provider and with each subsequent visit to determine if the child needs a referral to a dental provider. Dental examinations by a qualified dental provider should begin between the ages of two and three (unless otherwise indicated) and once yearly thereafter. Additionally, children should be seen for prophylaxis once every 184 days. All other dental services for relief of pain and infection, restoration of teeth and maintenance of dental health should occur as the provider deems necessary.

317:30-3-65.9. Hearing services

(a) At a minimum, hearing services include hearing evaluation once every 12 months, hearing aid evaluation if indicated and purchase of a hearing aid when prescribed by a state licensed audiologist who:

(1) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(2) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(3) has completed the academic program and is acquiring supervised work experience necessary for the certificate; and

(4) holds a contract with OHCA to perform such an evaluation and obtains prior authorization for the evaluation.

(b) Interperiodic hearing examinations are allowed at intervals outside the periodicity schedule when a hearing condition

is suspected (refer to OAC 317:30-5-676 for amount, duration and scope). The following schedule outlines the services required in the EPSDT/OHCA child Health screening program for hearing services adopted by the OHCA.

(1) Birth. Physiologic screen utilizing automated brainstem response testing or transient-evoked otoacoustic emissions testing.

(2) Two to five months. Subjective screens. Question if passed physiologic newborn hearing screen months in both ears in addition to caregiver concerns regarding hearing sensitivity.

(3) Six to twelve months. Infants with JCIH risk factors are screened with physiologic or behavioral months measures including either visual reinforcement audiometry, auditory brainstem response testing or otoacoustic emissions testing. Infants without risk factors are screened subjectively withy auditory behavior development checklist.

(4) 18 months. Subjective screen. To include brief questionnaire regarding appropriate speech and language development.

(5) 24 months. Children with JCIH risk factors screened with physiologic or behavioral measures including visual reinforcement audiometry, otoacoustic emissions, or acoustic immittance/reflex testing. Subjective screen for all others to include concerns of caregivers and brief questionnaire regarding speech and language development.

(6) Three years. Behavioral or physiologic screen including either conditioned play audiometry, acoustic immittance testing (including reflexes), pneumatic otoscopy, or otoacoustic emissions.

(7) Four years. Behavioral or physiologic screen including either conditioned play audiometry, acoustic immittance testing (including reflexes), or otoacoustic emissions.

(8) Five to six years. Behavioral screen if not completed in school including conventional behavioral pure tone screening.

(9) Eight, ten and 12 years. Behavioral screen if not completed in school including conventional behavioral pure tone screening.

(10) 15 and 18 years. Subjective screening to include concerns regarding school and home communicative performance.

317:30-3-65.10. Periodic and interperiodic screening examinations

(a) **Periodic screening examination.** Periodic screening must be provided in accordance with the periodicity schedule as described in OAC 317:30-3-65.2 following the initial screening.

(b) **Interperiodic screening examination.** Interperiodic screenings must be provided when medically necessary to determine the existence of suspected physical or mental illnesses or conditions. This may include, but not limited to, physical, mental or dental conditions. The screening components must include health and physical history, physical examination, assessment and administration of necessary immunizations, check of nutritional status, appropriate lab and x-ray and anticipatory guidance. The determination of whether an interperiodic screen is medically necessary may be made by a health, developmental or educational professional who comes into contact with the child outside of the formal health care system. Claims for interperiodic screenings must be billed under the appropriate CPT codes on form HCFA-1500 for services that are determined medically necessary.

317:30-3-65.11. Partial screening examination

A partial screening may be paid if the provider cannot provide all of the minimum components of the screening.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 15. CHILD HEALTH CENTERS

317:30-5-195. General provisions

~~(a)~~ Payment is made to eligible providers for Early and Periodic Screening, Diagnosis and Treatment (EPSDT) services ~~in~~ on behalf of eligible individuals under the age of 21. Specific guidelines for the EPSDT program including the periodicity schedule are found in OAC 317:30-3-65 through 317:30-3-65.11.

~~(b) The EPSDT Program is a comprehensive child health program, designed to ensure the availability of, and access to, required health care resources and help parents and guardians of Medicaid eligible children use these resources. An effective EPSDT program assures that health problems are diagnosed and treated early before they become more complex and their treatment more costly. The Child Health Center plays a significant role in educating parents and guardians about all services available through the EPSDT Program. The receipt of an identified EPSDT screening makes the Medicaid child eligible for all necessary follow-up care that is within the scope of the Medicaid Program. Federal regulations require that diagnosis and treatment be provided for conditions identified during a screening whether or not they are covered under the Authority's current program. Such services must be allowable under Federal Medicaid Regulations and must be necessary to ameliorate or correct defects of physical or mental illnesses/ conditions and will require prior authorization.~~

~~(c) Federal regulations also require that the state set standards and protocols for each component of EPSDT services. The standards must provide for services at intervals which meet reasonable standards of medical and dental practice. The standards must also provide for EPSDT services at other intervals as medically necessary to determine the existence of certain physical and mental illnesses or conditions. Medicaid providers who offer EPSDT screenings must assure that the screenings they provide meet the minimum standards for those services in order to be reimbursed at the level established for EPSDT services.~~

~~(d) To ensure full payment for the EPSDT screening, providers must perform and document all necessary components of the screening examination. Documentation of screening services performed must be retained for future review.~~

317:30-5-196. Eligible providers

Eligible providers are child health centers which meet the standards and criteria for Child Health Centers in Oklahoma as established by the Oklahoma State ~~Health~~ Department of Health ~~(OSHD)~~ (OSDH). The Oklahoma State ~~Health~~ Department of Health will provide to the OHCA the names of all qualified child health centers at the time of the initial qualification and at least annually thereafter. ~~OSHD~~ OSDH will notify OHCA when an existing center fails to meet OSHD standards and criteria. Upon notice of a newly qualified center, OHCA may enter into a Title XIX contractual arrangement with the center to provide EPSDT services.

317:30-5-197. Periodicity schedule

~~The Oklahoma Medicaid Program adopted the recommendations of the American Academy of Pediatrics which include at least the following:~~ A complete description of services to be provided at each screening interval is outlined in the periodicity schedule found at OAC 317:30-3-65.2.

~~(1) Six screenings during the first year of life;~~

~~(2) Two screenings in the second year;~~

~~(3) One screening yearly for ages two through five years;~~

~~(4) One screening every other year for ages six through 20 years.~~

317:30-5-198. Coverage by category

(a) **Adults.** There is no coverage for services rendered to adults.

(b) **Individuals eligible for Part B of Medicare.** EPSDT Center services provided to Medicare eligible recipients should be billed directly to the fiscal agent.

(c) **Children.** Payment is made for compensable services rendered in eligible child health centers ~~as described below~~ for the following services:

(1) **Child health screening examination.** ~~An initial screening may be requested by an eligible individual at any time and must be provided without regard to whether the individual's age coincides with the established periodicity schedule. A child health screening examination must include all of the following components to be compensable.~~ Child health screening examination must meet guidelines found at OAC 317:30-3-65.4.

~~(A) **Comprehensive health and development history.** This information may be obtained from the parent or other responsible adult who is familiar with the child's history and include an assessment of both physical and mental health development. Coupled with the physical examination, this includes:~~

~~(i) **Developmental Assessment.** The developmental assessment includes a range of activities to determine whether an individual's developmental processes fall within a normal range of achievement according to age group and cultural background. Screening for developmental assessment is a part of every routine, initial and periodic screening examination. Providers should acquire information on the child's usual functioning as reported by the child, teacher, health professional or other familiar person and review developmental progress as a component of overall health and well-being given the child's age and culture. As appropriate, assess the following elements:~~

~~(I) Gross and fine motor development;~~

~~(II) Communication skills, language and speech development;~~

~~(III) Self-help, self-care skills;~~

~~(IV) Social-emotional development;~~

~~(V) Cognitive skills;~~

~~(VI) Visual-motor skills;~~

~~(VII) Learning disabilities;~~

~~(VIII) Psychological/psychiatric problems;~~

~~(IX) Peer relations; and/or~~

~~(X) Vocational skills.~~

~~(ii) **Assessment of Nutritional Status.** Nutritional assessment may include preventive treatment and follow-up services including dietary counseling and nutrition education if appropriate. This is accomplished in the basic examination through:~~

~~(I) Questions about dietary practices;~~

~~(II) Complete physical examination, including an oral dental examination;~~

~~(III) Height and weight measurements;~~

~~(IV) Laboratory test for iron deficiency; and~~

~~(V) Serum cholesterol screening, if feasible and appropriate.~~

~~(B) **Comprehensive unclothed physical examination.** A comprehensive unclothed physical examination includes the following:~~

~~(i) **Physical growth.** Record and compare height and weight with those considered normal for that age; record head circumference for children under one year of age; and report height and weight over time on a graphic recording sheet.~~

~~(ii) **Unclothed physical inspection.** Check the general appearance of the child to determine overall health status and detect obvious physical defects. Physical inspection includes an examination of all organ systems such as pulmonary, cardiac, and gastrointestinal.~~

~~(C) **Appropriate immunizations.** Assess whether the child has been immunized against diphtheria, pertussis, tetanus, polio, measles, rubella, and mumps, and whether booster shots are needed. Immunizations must be provided when medically necessary and appropriate. Immunizations can be provided at the time of the screening when appropriate. Separate payment~~

~~will be made for immunizations which are given at the time of the screening.~~

~~(D) **Appropriate laboratory tests.** Use medical judgement in determining the applicability of the laboratory tests or analyses that are medically contraindicated at the time of the screening, provide them when no longer medically contraindicated. Laboratory tests should only be given when medical judgement determines they are appropriate. However, laboratory tests should not be routinely administered. As appropriate, conduct the following laboratory tests:~~

~~(i) Lead toxicity screening. Is required for every Medicaid eligible child at 12 and 24 months of age. A lead toxicity screening is also required for any Medicaid eligible child 36 to 72 months of age who has not previously been screened for lead poisoning. Any additional lead toxicity screening will continue to be covered based on a provider's medical judgment.~~

~~(ii) Anemia test.~~

~~(iii) Sickle cell test. If a child has been properly tested once for sickle cell disease, the test need not be repeated.~~

~~(iv) Tuberculin test. Give a tuberculin test to every child who has not received one within a year.~~

~~(v) In addition to the tests listed (i) through (iv) of this subparagraph, there are several other tests to consider. Appropriateness is determined by an individual's age, sex, health history, clinical symptoms and exposure to disease. These may include a urine screening, pinworm slide, urine culture (for girls), serological test, drug dependency screening, stool specimen for parasites, ova, blood and HIV screening.~~

~~(E) **Health Education.** Health education is a required component of screening services and includes anticipatory guidance. At the outset, the physical and dental assessment, or screening, gives the initial context for providing health education. Health education and counseling to both parents, guardians or children is required. It is designed to assist in understanding expectations of the child's development and provide information about the benefits of healthy lifestyles and practices as well as accident and disease prevention.~~

(~~F~~2) **Vision and hearing screens.** Vision and hearing services are subject to their own periodicity schedules. However, age appropriate vision and hearing assessments must be performed as a part of the screening (refer to OAC 317:30-3-65.7 and 317:30-3-65.9 for specific guidelines).

~~(G) **Dental screening services.** An oral dental examination may be included in the screening and as a part of the nutritional status assessment. Federal regulations require a direct dental referral for every child in accordance with the periodicity schedule and at other intervals as medically necessary. Therefore, when an oral examination is done at the time of the screening, the child may be referred directly to a dentist for further screening and/or treatment.~~

(~~H~~3) **Diagnosis and treatment.** When a screening indicates the need for further evaluation of an individual's health, a referral for diagnostic services are defined as those services necessary to fully evaluate defects, physical or mental illnesses or conditions discovered by the screening (refer to OAC 317:30-3-65.5 for specific guidelines).

~~(I) **Other.** Health care, treatment, or other measures to correct or ameliorate defects, physical or mental illnesses or conditions must also be provided and will be covered by the EPSDT Program. The defects, illnesses and conditions must have been discovered during the screening or shown to have increased in severity.~~

~~(J) **Services deemed medically necessary.** Services deemed medically necessary and allowable under federal Medicaid regulations, may be covered by the EPSDT Program even though those services may not be part of the Oklahoma Health Care Authority Medicaid program. However, such services must be prior authorized and must be allowable under federal Medicaid regulations. Federal Medicaid regulations also require the state to make the determination as to whether the service is necessary and do not require the provision of any items or services that the state determines are not safe and effective or which are considered experimental.~~

(~~2~~4) **Dental screening examination and treatment services.** ~~An examination for dental disease by an Oklahoma licensed dentist. This will include prophylaxis with fluoride treatment, and charting of needed treatment and, if necessary, x-rays (including two bite wing films).~~ The dental screening examination must meet guidelines found at OAC 317:30-3-65.4(7).

~~(3) **Dental sealants.** Professional application of dental sealants when appropriate to prevent pit and fissure caries requires prior authorization. Provider warrants this service to OHCA for a period of eight years, replacement of lost sealants will be at no cost to OHCA. Teeth numbers 03, 14, 19 and 30 are eligible for sealants from eruptions thru eight years of age. Teeth numbers 02, 15, 18 and 31 from eruption thru 13 years of age. Teeth numbers 04, 05, 12, 13, 20, 21 and 29 from eruption thru 14 years of age.~~

~~(4) **Dental services.** At a minimum, dental services include relief of pain and infection; restoration of teeth and maintenance of dental health; and/or oral prophylaxis one each 12 months. Dental care includes emergency and preventive services and therapeutic services for dental disease which, if left untreated, may become acute dental problems or may cause irreversible damage to the teeth or supporting structures. Other dental services include inpatient services in an eligible participating hospital, amalgam and composite restorations, pulpotomies, chrome steel crowns, anterior root canals, pulpectomies, band and loop space maintainers, cement basis, acrylic flippers and lingual arch bars; other restoration, repair and/or replacement of dental defects. Some services may~~

~~require prior authorization. Services are to be provided as referenced in OAC 317:30-5, Part 79 (Dentists).~~

(5) **Child health encounter.** The child health encounter may include a diagnosis and treatment encounter, a follow-up health encounter, or a home visit. A Child Health Encounter may include a child health history, physical examination, developmental assessment, nutrition assessment and counseling, social assessment and counseling, genetic evaluation and counseling, indicated laboratory and screening tests, screening for appropriate immunizations, health counseling and treatment of childhood illness and conditions.

(6) **Child health diagnosis encounter.** The child health diagnosis encounter consists of the following procedures:

(A) an intake process and diagnosis interview which reviews the relevant developmental, medical, genetic, psychosocial, educational, and behavioral history;

(B) clinical observations and standardized assessment procedures regarding the client's overall development including emotional, speech, language, or hearing abilities;

(C) feedback regarding evaluation results which is provided to appropriate family and/or collaterals; and

(D) development of a treatment plan.

(7) **~~Child guidance treatment~~ Treatment encounter.** A ~~child guidance~~ treatment encounter may occur through the provision of individual, family, or group treatment services to children who are identified as having specific disorders or delays in development, emotional, or behavioral problems, or disorders of speech, language or hearing. These types of encounters are initiated following the completion of a diagnostic encounter and subsequent development of a treatment plan.

(8) **Immunization.** Immunizations will include all appropriate immunizations given in connection with a Child Health Screening Examination or Child Health Encounter.

(9) **Multidisciplinary review.** Multidisciplinary review of the treatment plan in order to determine if services should be continued, modified or terminated as evidenced by services rendered in child health and child guidance programs.

(10) **Hearing evaluation.** ~~Hearing evaluation includes pure tone air, bone and speech audiometry provided by a state licensed speech pathologist or audiologist who:~~ Hearing evaluations must meet guidelines found at OAC 317:5-675 and 317:30-5-676.

~~(A) holds a certificate of clinical competence from the American Speech and Hearing Association; or~~

~~(B) has completed the equivalent educational requirements and work experience necessary for the certificate; or~~

~~(C) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.~~

(11) **Audiometry test.** Audiometric test (Immittance [Impedance] audiometry or tympanometry) includes bilateral assessment of middle ear status and reflex studies (when appropriate) provided by a state licensed speech pathologist or audiologist who:

(A) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(B) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(C) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(12) **Ear impression (for earmold).** Ear impression (for earmold) includes taking impression of a client's ear and providing a finished earmold which is used with the client's hearing aid provided by a state licensed speech pathologist or audiologist who:

(A) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(B) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(C) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

317:30-5-199. Periodic screening examination

~~At a minimum, periodic screening must be scheduled and provided in accordance with the periodicity schedule following the initial screening.~~ Periodic screening examinations must be provided in accordance with the periodicity schedule as described in OAC 317:30-3-65.2 following the initial screening.

317:30-5-200. Interperiodic screening examination [REVOKED]

~~Interperiodic screenings must be provided when medically necessary to determine the existence of suspected physical or mental illnesses or conditions. They may include physical, mental or dental conditions. The determination of whether an interperiodic screen is medically necessary may be made by a health, developmental or educational professional who comes into contact with the child outside of the formal health care system.~~

317:30-5-201. Reporting of suspected child abuse/neglect

Instances of child abuse and/or neglect discovered through screenings and regular examinations are to be reported in accordance with state law [refer to OAC 317:30-5-2(b)(6)]. ~~Title 21, Oklahoma Statutes, Section 846, as amended, states in part: "Every physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents, and interns, examining, attending, or treating a child under the age of 18 years and every registered nurse examining, attending or treating such a child in the absence of a physician or surgeon, and every other person having~~

~~reason to believe that a child under the age of 18 years has had physical injury or injuries inflicted upon him or her by other than accidental means where the injury appears to have been caused as a result of physical abuse or neglect, shall report the matter promptly to the county office of the Department of Human Services in the county wherein the suspected injury occurred. Providing it shall be a misdemeanor for any person to knowingly and willfully fail to promptly report an incident as provided above." Persons reporting such incidents of abuse and/or neglect in accordance with the law are exempt from prosecution in civil or criminal suits that might be brought as a result of the report.~~

PART 35. RURAL HEALTH CLINICS

317:30-5-356. Coverage for adults

Payment is made to rural health clinics for adult services as set forth in this Section.

(1) **RHC services.** Payment is limited to four visits per recipient per month. Refer to OAC 317:30-1, General Provisions, and ~~OAC 317:30-3-51~~ OAC 317:30-3-65.4 for exceptions to this limit for children under the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT). Additional preventive service exceptions include:

(A) **Obstetrical care.** A Rural Health Clinic should have a written contract with its physician, nurse midwife, advanced practice nurse, or physician assistant that specifically identifies how maternity care will be billed to Medicaid, in order to avoid duplicative billing situations. The agreement should also specifically identify the physician's compensation for rural health and non-rural health clinic (other ambulatory) services.

(i) If the clinic compensates the physician, nurse midwife or advanced practice nurse to provide maternity care, then the clinic must bill the Medicaid program for prenatal care as a "maternity encounter". A maternity encounter includes a comprehensive physical examination and/or routine scheduled medical visits. Payment will be allowed for one initial visit and 13 subsequent visits:

(I) three visits during the first trimester;

(II) three visits during the second trimester; and

(III) eight visits during the third trimester.

(ii) If the clinic does not compensate its practitioners to provide maternity care, then the independent practitioner must bill the Medicaid program for obstetrical care according to the method described in the Medicaid provider specific fee-for-service rules for physicians, nurse midwives and advanced practice nurses. (Physician Assistants are excluded from billing the Medicaid program as individual practitioners.)

(iii) Under both billing methods, payment for prenatal care includes all routine or minor medical problems. No additional payment is made to the prenatal provider except in the case of a major illness distinctly unrelated to pregnancy.

(iv) A standard profile of routine obstetrical lab services may be billed separately. The appropriate revenue code and CPT codes are used.

(B) **Family planning services.** Family planning services are paid on an encounter basis. Coverage of family planning services are available to women between the child bearing age of 12 and 50. Family planning encounters do not count as one of the two RHC visits per month.

(i) A family planning visit includes a physical examination, counseling and prescribing appropriate medications and/or contraceptive methods.

(ii) Prescribed contraceptives may be billed independently from the family planning encounter.

(2) **Other ambulatory services.** Services defined as "other ambulatory" services are not considered a part of a RHC encounter and are therefore billable to the Medicaid program by the RHC or provider of service on the appropriate claim forms. Other ambulatory services are subject to the same scope of coverage as other Medicaid services billed to the program, i.e., limited adult services and some services for under 21 subject to same prior authorization process. Refer to OAC 317:30-1, General Provisions, and OAC 317:30-3-57 through 317:30-3-60 for general coverage and exclusions under Medicaid fee-for-services. Refer to OAC 317:30-3-51 for exceptions under EPSDT. Some specific limitations are applicable to other ambulatory services as set forth in Specific Provider Rules and excerpted as follows: Coverage under optometrists for adults is limited to treatment of eye disease not related to refractive errors. There is no coverage for eye exams for the purpose of prescribing eyeglasses, contact lenses or other visual aids. (See OAC 317:30-5-431.)

PART 37. ADVANCED PRACTICE NURSE

317:30-5-376. Coverage by category

Payment is made to Advanced Practice Nurse as set forth in this Section.

(1) **Adults.** Payment for adults is made for primary care health services, within the scope of practice of Advanced Practice Nurse and within the scope of the Oklahoma Health Care Authority medical programs.

(2) **Children.** Payment for children is made for primary care health services, within the scope of practice of Advanced Practice Nurse, to children and adolescents under 21 years of age including EPSDT screening services and within the scope of the Oklahoma Health Care Authority medical programs.

(A) Payment is made to eligible providers for Early and Periodic Screening, Diagnosis and Treatment of individuals under age 21. Specific guidelines

for the EPSDT program including the periodicity schedule are found in OAC 317:30-3-65 through 317:30-3-65.11.

~~(B) The EPSDT program is a comprehensive child health program, designed for ensuring the availability of and access to required health care resources and helping parents and guardians of Medicaid eligible children effectively use these resources. The receipt of an identified EPSDT screening makes the Medicaid eligible child eligible for necessary follow up medical care.~~

~~(C) The Oklahoma Medicaid Program adopted the recommendations of the American Academy of Pediatrics which includes at least the following:~~

~~(i) six screenings during the first year of life;~~

~~(ii) two screenings in the second year;~~

~~(iii) one screening yearly for ages 2 thru 5 years; and~~

~~(iv) one screening every other year for ages 6 thru 20 years.~~

(~~D~~B) Comprehensive screening examinations are to be performed by a provider qualified under State law to furnish primary health care services.

(3) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services.

PART 45. OPTOMETRISTS

317:30-5-431. Coverage by category

Payment is made to optometrists as set forth in this Section.

(1) **Adults.** Payment can be made for medical services that are reasonable and necessary for the diagnosis and treatment of illness or injury up to the patient's maximum number of allowed office visits per month.

(A) Payment is made for treatment of eye disease not related to refractive errors. There is no provision for routine exams, treatment of refractive errors, lenses, frames, eye examinations for the purpose of prescribing glasses or for the purchase of visual aids.

(B) In cataract participatory surgery, separate payment can be made to the optometrist for postoperative care. Payment for postoperative care will be made at 20% of the surgical allowable. Postoperative care for cataract surgery should be filed using appropriate CPT codes, modifiers and guidelines. The surgeon's name must be present on the claim in the referring physician's block or payment will be denied.

(C) Payment for laser surgery to optometrist is limited to those optometrists certified by the Board of Optometry as eligible to perform laser surgery.

(2) **Children.**

(A) Payment can be made for medical services that are reasonable and necessary for the diagnosis and treatment of illness, injury, amblyopia and significant refractive errors or strabismus.

(B) Within the scope of the Early and Periodic Screening, Diagnosis and Treatment Program (EPSDT), payment will be made for periodic visual screenings as set forth in the periodicity schedule ~~adopted by the Oklahoma Health Care Authority (OHCA) in accordance with the American Academy of Pediatrics~~ found at OAC 317:30-3-65.7. Payment will be made for lenses and frames required to correct visual defects or to protect children with monocular vision. In addition to periodic visual screenings, payment will be made for ~~inter periodic~~ interperiodic visual screenings when medically necessary.

(3) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services.

[OAR Docket #06-1001; filed 5-22-06]

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

[OAR Docket #06-1017]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-57. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-2. [AMENDED]
Part 5. Pharmacists
317:30-5-77.2. [AMENDED]
(Reference APA WF # 05-40)
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Subchapter 5. Individual Providers and Specialties
Part 1. Physicians
317:30-5-2. [AMENDED]

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October 3, 2005
Register publication:
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(Reference APA WF # 05-15)
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Obstetric care rules are revised to establish payment for 5-15 minute, five step counseling sessions as treatment for pregnant women who smoke. The five step interventions are used during routine pre-natal office visits for smoking cessation and include the following five steps: Ask, Advise, Assess, Assist, and Arrange. Smoking during pregnancy is associated with maternal, fetal, and infant morbidity and mortality. An office-based protocol that systematically identifies pregnant women who smoke and offers treatment has been proven to increase quit rates. The rules establish reimbursement to providers for the provision of the "5A's" counseling intervention program to pregnant Medicaid recipients. This payment would be allowed in addition to the applicable global fee billing and any other appropriate and allowed treatment, and/or testing for which they are reimbursed. Further revisions bring rules in line with other revisions submitted this same date in APA WF # 05-20 and allow reimbursement for the removal of benign skin lesions for adults when medically necessary. Currently, rules exclude payment for cosmetic surgery including the removal of all benign skin lesions for adults. Still further revisions bring rules in line with revisions submitted this same date in APA WF # 05-23. These revisions modify the current periodicity schedule to reflect recommendations after consultation with various providers and advocates of child health in accordance with a federal law suit and to update outdated language throughout agency rules.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-57. General Medicaid ~~coverages~~ coverage - categorically needy

The following are general Medicaid ~~coverages~~ coverage for the categorically needy:

(1) Inpatient hospital services other than those provided in an institution for mental diseases.

(A) Adult coverage limited to the compensable inpatient hospital days described at OAC 317:30-5-41.

(B) Coverage for persons under 21 years of age is not limited. All admissions must be medically necessary. All psychiatric admissions require prior authorization for an approved length of stay.

(2) Emergency department services.

(3) Dialysis in an outpatient hospital or free standing dialysis facility.

(4) Outpatient therapeutic radiology or chemotherapy for proven malignancies or opportunistic infections.

(5) Outpatient surgical services - facility payment for selected outpatient surgical procedures to hospitals which have a contract with the Authority.

(6) Outpatient Mental Health Services for medical and remedial care including services provided on an outpatient basis by certified hospital based facilities ~~who~~ that are also qualified mental health clinics.

(7) Rural health clinic services and other ambulatory services furnished by rural health clinic.

(8) Optometrists' services - only as listed in Subchapter 5, Part 45, Optometrist specific rules of this Chapter.

(9) Maternity Clinic Services through the Oklahoma State Health Department.

(10) Outpatient diagnostic x-rays and lab services. Other outpatient services provided adults, not specifically addressed, are covered only when prior authorized by the agency's Medical Authorization Unit.

(11) One screening mammogram and one follow-up mammogram every year for women beginning at age 30. Additional follow-up mammograms are covered when medically necessary. Additional follow-up mammograms require a prior authorization from the agency's Medical Authorization Unit.

(12)Nursing facility services (other than services in an institution for tuberculosis or mental diseases).

(13) Early and Periodic Screening, Diagnosis and Treatment Services (EPSDT) are available for each eligible individual under 21 years of age to provide access to regularly scheduled examinations and evaluations of the general physical and mental health, growth, development, and nutritional status of infants, children, and youth. Federal regulations also require that diagnosis and treatment be provided for conditions identified during a screening whether or not they are covered under the State Plan, as long as federal funds are available for these services. These services must be necessary to ameliorate or correct defects and physical or mental illnesses or conditions and will require prior authorization. ~~EPSDT~~ EPSDT/OHCA Child Health services ~~include payment for:~~ are outlined in OAC 317:30-3-65.2 through 317:30-3-65.4.

(A) Child health screening examinations for eligible children by a medical or osteopathic physician.

~~(i) Scheduled screenings include:~~

~~(I) six screenings during the first year of life~~

~~(II) two screenings in the second year;~~

~~(III) one screening yearly for ages 2 thru 5 years; and~~

~~(IV) one screening every other year for ages 6 thru 20 years.~~

~~(ii) Interperiodic screenings outside the periodicity schedule for screening examinations are allowed at necessary intervals when a medical condition is suspected.~~

(B) Diagnostic x-rays, lab, and/or injections when prescribed by a physician.

(C) Immunizations.

(D) Outpatient care.

(E) Dental services~~, including inpatient services in an eligible participating hospital, outpatient dental screening every 12 months, two bite wing x-rays, and/or oral prophylaxis one each 12 months; emergency services for relief of pain and/or acute infection; limited restoration, repair and/or replacement of dental defects after the treatment plan submitted by dentist has been authorized~~ as outlined in OAC 317:30-3-65.8.

(F) Optometrists' services. The EPSDT periodicity schedule provides for at least one visual screening and glasses each 12 months. In addition, payment is made for glasses for children with congenital aphakia or following cataract removal. Interperiodic screenings and glasses at intervals outside the periodicity schedule for optometrists are allowed when a visual condition is suspected.

(G) Hearing services ~~include hearing evaluation at least once every 12 months, hearing aid evaluation if indicated and purchase of a hearing aid when prescribed by a state licensed audiologist who holds a certificate of clinical competence from the American Speech and Hearing Association and preauthorized~~ as outlined in OAC 317:30-3-65.9. ~~Interperiodic hearing examinations are allowed at intervals outside the periodicity schedule when a hearing condition is suspected.~~

(H) Prescribed drugs.

(I) Outpatient Psychological services for eligible individuals under 21 years of age must be prior authorized. Payment is made to eligible psychologists who are duly licensed to practice. Outpatient testing and diagnosis is limited to one hour per patient each 12 months. Additional hours may be prior authorized.

(J) Inpatient Psychotherapy Services. Payment is made to eligible psychologists and psychiatrists. Inpatient psychotherapy by a psychologist must be prior authorized.

(K) Inpatient psychological testing for eligible individuals under 21 years of age. Limited to one hour per recipient each 12 months. If medically necessary, additional hours must be prior authorized. Payment is made to eligible psychologists who are duly licensed to practice.

(L) Transportation. Provided when necessary in connection with examination or treatment when not otherwise available.

(M) Inpatient hospital services.

(N) Medical supplies, equipment, appliances and prosthetic devices beyond the normal scope of Medicaid.

(O) EPSDT services furnished in a qualified child health center.

(14) Family planning services and supplies for individuals of child-bearing age, including counseling, insertion of intrauterine device and sterilization for persons 21 years of age and over who are legally competent, not institutionalized and have signed the "Consent Form" at least 30 days prior to procedure. Reversal of sterilization procedures for the purposes of conception ~~are~~ is not covered. Reversal of sterilization procedures may be covered when medically indicated and substantiating documentation is attached to the claim. The Norplant System for birth control is covered; however, removal of the Norplant System prior to five years is covered only when documented as medically necessary. Reinsertion of Norplant contraceptive will be considered on a case by case basis.

(15) Family planning centers.

(16) Physicians' services whether furnished in the office, the patient's home, a hospital, a nursing facility, ICF/MR, or elsewhere. For adults, payment will be made for up to the limited number of compensable hospital days described at OAC 317:30-5-41. These days will be maintained on the recipient record. Physician claims for hospital visits will be paid until the last compensable hospital day is captured. After the limited number of hospital days have been captured, inpatient physician services will not be paid beyond the last compensable hospital day. Office visits for adults are limited to four per month except when in connection with emergency medical conditions.

(17) Medical care and any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law. See applicable provider section for limitations to covered services for:

(A) Podiatrists' services

(B) Optometrists' services

(C) Psychologists' services

(D) Certified Registered Nurse Anesthetists

(E) Certified Nurse Midwives

(F) Advanced Practice Nurses

(18) Free-standing ambulatory surgery centers.

(19) Prescribed drugs not to exceed a total of six prescriptions with a limit of three brand name prescriptions per month. Exceptions to the six prescription limit are:

(A) unlimited medically necessary monthly prescriptions for:

(i) individuals under the age of 21 years; and

(ii) residents of Nursing Facilities or Intermediate Care Facilities for the Mentally Retarded.

(B) seven additional medically necessary prescriptions which are generic products per month to the six covered under the State Plan are allowed for adults receiving services under the §1915(c) Home and Community Based Services Waivers. Medically necessary prescriptions beyond the three brand name or thirteen total prescriptions will be covered with prior authorization.

(20) Rental and/or purchase of durable medical equipment.

(21) Adaptive equipment, when prior authorized, for persons residing in private ICF/MR's.

(22) Dental services for persons residing in private ICF/MR's in accordance with the scope of dental services for persons under age 21.

(23) Prosthetic devices limited to catheters and catheter accessories, colostomy and urostomy bags and accessories, tracheostomy accessories, nerve stimulators, hyperalimentation and accessories, home dialysis equipment and supplies, oxygen/oxygen concentrator equipment and supplies, respirator or ventilator equipment and supplies, and those devices inserted during the course of a surgical procedure.
(24) Standard medical supplies.
(25) Eyeglasses under EPSDT for individuals under age 21. Payment is also made for glasses for children with congenital aphakia or following cataract removal.
(26) Blood and blood fractions for eligible persons when administered on an outpatient basis.
(27) Inpatient services for individuals age 65 or older in institutions for mental diseases, limited to those persons whose Medicare, Part A benefits are exhausted for this particular service and/or those persons who are not eligible for Medicare services.
(28) Nursing facility services, limited to individuals preauthorized and approved by OHCA for such care.
(29) Inpatient psychiatric facility admissions for individuals under 21 are limited to an approved length of stay effective July 1, 1992, with provision for requests for extensions.
(30) Transportation and subsistence (room and board) to and from providers of medical services to meet patient's needs (ambulance or bus, etc.), to obtain medical treatment.
(31) Extended services for pregnant women including all pregnancy-related and postpartum services to continue to be provided, as though the women were pregnant, for 60 days after the pregnancy ends, beginning on the last date of pregnancy.
(32) Nursing facility services for patients under 21 years of age.
(33) Personal care in recipient's home, prescribed in accordance with a plan of treatment and rendered by a qualified person under supervision of an R.N.
(34) Part A deductible and Part B medicare Coinsurance and/or deductible.
(35) Home and Community Based Waiver Services for the mentally retarded.
(36) Home health services limited to 36 visits per year and standard supplies for 1 month in a 12-month period. The visits may be any combination of Registered Nurse and nurse aide visits, not to exceed 36 per year.
(37) Organ and tissue transplantation services for children and adults, limited to bone marrow, stem cells, cornea, heart, kidney, liver, lung, SPK (simultaneous pancreas kidney), PAK (pancreas after kidney), and heart-lung, are covered services based upon the conditions listed in (A)-(D) of this paragraph:
(A) All transplantation services, except kidney and cornea, must be prior authorized to be compensable.
(B) To be prior authorized all procedures are reviewed based on appropriate medical criteria.
(C) To be compensable under the Medicaid program all organ transplants must be performed at a Medicare approved transplantation center.
(D) Finally, procedures considered experimental or investigational are not covered.
(38) Home and community-based waiver services for mentally retarded individuals who were determined to be inappropriately placed in a NF (Alternative Disposition Plan - ADP).
(39) Case Management services for the chronically and/or severely mentally ill.
(40) Emergency medical services including emergency labor and delivery for illegal or ineligible aliens.
(41) Services delivered in Federally Qualified Health Centers. Payment will be made on an encounter basis. ~~An encounter is all medical or dental services provided by the center in one day.~~
(42) Early Intervention services for children ages 0-3.
(43) Residential Behavior Management in therapeutic foster care setting.
(44) Birthing center services.
(45) Case management services through the Oklahoma Department of Mental Health and Substance Abuse.
(46) Home and Community-Based Waiver services for aged or physically disabled individuals.
(47) Outpatient ambulatory services for persons infected with tuberculosis.
(48) Smoking and Tobacco Use Cessation Counseling for children and adults.
(49) Services delivered to American Indians/Alaskan Natives in I/T/Us. Payment will be made on an encounter basis.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 1. PHYSICIANS

317:30-5-2. General coverage by category

(a) **Adults.** Payment for adults is made to physicians for medical and surgical services within the scope of the Authority's medical programs, provided the services are reasonable and necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Coverage of certain services may be based on a determination made by the medical consultant in individual circumstances.
(1) Coverages include the following:
(A) ~~Effective August 1, 2000, all general acute care inpatient hospital services for all persons 21 years of age or older, will be limited to 24 days per person per state fiscal year (July 1 through June 30). This limitation does not apply to free standing psychiatric facilities providing inpatient treatment to persons under 21 years of age and 65 years of age and~~

~~older. The 24 days limitation applies to both hospital and physician services. Payment will be made for up to 24 hospital days paid on hospital claims during a state fiscal year for each individual recipient. These days will be maintained on the recipient record. Physician claims for hospital visits will be paid until the last compensable hospital day is captured. After 24 hospital days have been captured, no inpatient physician services will be paid beyond the last compensable hospital day. No exceptions or extensions will be made to the 24 day inpatient services limitation.~~ Medically appropriate inpatient hospital visits are covered for all Medicaid covered stays. All inpatient services are subject to post-payment review by the OHCA, or its designated agent. ~~Effective October 1, 1993, for all persons ages 21 to 65 years, there is no coverage for inpatient chemical dependency treatment and inpatient detoxification is limited to a maximum of five days per admission and subject to post payment review.~~

(B) Inpatient psychotherapy by a physician.

(C) Inpatient psychological testing by a physician.

(D) One inpatient visit per day, per physician.

(E) Certain surgical procedures performed in a Medicare certified free-standing ambulatory surgicenter or a Medicare certified hospital that offers outpatient surgical services. Refer to the List of Covered Surgical Procedures.

(F) Therapeutic radiology or chemotherapy on an outpatient basis without limitation to the number of treatments per month for persons with proven malignancies or opportunistic infections.

(G) Direct physicians' services are covered on an outpatient basis. A maximum payment of four visits are covered per month per patient in office or home regardless of the number of physicians providing treatment. Additional visits per month are allowed for those services related to emergency medical conditions and for services in connection with Family Planning.

(H) Direct physicians' services in a nursing facility for those patients approved for nursing care. Payment is made for a maximum of two nursing facility visits per month. To receive payment for a second nursing facility visit in a month denied by Medicare for a Medicare/Medicaid patient, attach the EOMB from Medicare showing denial and mark "carrier denied coverage".

(I) Payment is made for medically necessary diagnostic x-ray and laboratory work.

(J) One screening mammogram and one follow-up mammogram every year for women beginning at age 30. Additional follow-up mammograms are covered when medically necessary. A prior authorization by the Medical Professional Services Division of the Oklahoma Health Care Authority is required for additional follow-up mammograms. This includes interpretation and technical component.

(K) Obstetrical care.

(L) Pacemakers and prostheses inserted during the course of a surgical procedure. Payment is made based upon an invoice for the item.

(M) Prior authorized examinations for the purpose of determining medical eligibility for programs under the jurisdiction of the Authority. A copy of the authorization, DHS form ABCDM-16, Authorization for Examination and Billing, must accompany the claim.

(N) If a physician personally sees a patient on the same day as a dialysis treatment, payment can be made for a separately identifiable service unrelated to the dialysis.

(O) Family planning - including sterilization procedures for legally competent persons 21 years of age and over who voluntarily request such a procedure and, with their physician, execute the Federally mandated consent form (ADM-71). A copy of the consent form must be attached to the claim form. Separate payment is made for an I.U.D. inserted during an office visit. Certain family planning products may be obtained through the Vendor Drug Program. Reversal of sterilization procedures for the purposes of conception are not covered. Reversal of sterilization procedures may be covered when medically indicated and substantiating documentation is attached to the claim. The Norplant System for birth control is covered; however, removal of the Norplant System prior to five years is covered only when documented as medically necessary. Reinsertion of Norplant contraceptive will be considered on a case by case basis.

(P) Genetic counseling (requires special medical review prior to approval).

(Q) Blood count weekly for persons receiving the drug Clozaril.

(R) Complete blood count and platelet count prior to receiving chemotherapeutic agents or radiation therapy and for persons receiving medication such as DPA-D-Penacillamine on a regular basis for treatment other than malignancies.

(S) Payment of ultrasounds for pregnant women as specified in OAC 317:30-5-22.

(T) Payment to the attending physician in a teaching medical facility for compensable services when the physician signs as claimant and renders personal and identifiable services to the patient in conformity with Federal regulations.

(U) Payment to clinical fellow or chief resident in an outpatient academic setting when the following conditions are met:

(i) Recognition as clinical faculty with participation in such activities as faculty call, faculty meetings, and having hospital privileges;

(ii) Board certification or completion of an accredited residency program in the fellowship specialty area;

(iii) Hold unrestricted license to practice medicine in Oklahoma;

(iv) If Clinical Fellow, practicing during second or subsequent year of fellowship;

(v) Seeing patients without supervision;

(vi) Services provided not for primary purpose of medical education for the clinical fellow or chief resident;

(vii) Submit billing in own name with appropriate Oklahoma Medicaid provider number.

(viii) Additionally if a clinical fellow practicing during the first year of fellowship, the clinical fellow must be practicing within their area of primary training. The services must be performed within the context of their primary specialty and only to the extent as allowed by their accrediting body.

(V) Payment to the attending physician for the services of a currently Oklahoma licensed physician in training when the following conditions are met.

(i) Attending physician performs chart review and sign off on the billed encounter;

(ii) Attending physician present in the clinic/or hospital setting and available for consultation;

(iii) Documentation of written policy and applicable training of physicians in the training program regarding when to seek the consultation of the attending physician.

(W) Payment to the attending physician for the outpatient services of an unlicensed physician in a training program when the following conditions are met:

(i) The patient must be at least minimally examined and reviewed by the attending physician or a licensed physician under the supervision of the attending physician;

(ii) This contact must be documented in the medical record.

(X) Payment to a physician for supervision of CRNA services unless the CRNA bills directly.

(Y) One pap smear per year for women of child bearing age. Two follow-up pap smears are covered when medically indicated.

(Z) Organ and tissue transplantation services for children and adults, limited to bone marrow, stem cells, cornea, heart, kidney, liver, lung, SPK (simultaneous pancreas kidney), PAK (pancreas after kidney), and heart-lung, are covered services based upon the conditions listed in (i)-(iv) of this subparagraph:

(i) All transplantation services, except kidney and cornea, must be prior authorized to be compensable.

(ii) To be prior authorized all procedures are reviewed based on appropriate medical criteria.

(iii) To be compensable under the Medicaid program all organ transplants must be performed at a Medicare approved transplantation center.

(iv) Finally, procedures considered experimental or investigational are not covered.

(AA) Total parenteral nutritional therapy for certain diagnoses and when prior authorized.

(BB) Ventilator equipment.

(CC) Home dialysis equipment and supplies.

(DD) Ambulatory services for treatment of persons with tuberculosis (TB). This includes, but is not limited to, physician visits, outpatient hospital services, rural health clinic visits and prescriptions. Drugs prescribed for the treatment of TB not listed in OAC 317:30-3-46 require prior authorization by the University of Oklahoma College of Pharmacy using form "Petition for TB Related Therapy". Ambulatory services to persons infected with TB are not limited to the scope of the Medicaid program, but require prior authorization when the scope is exceeded.

(EE) Smoking and Tobacco Use Cessation Counseling for treatment of individuals using tobacco.

(i) Smoking and Tobacco Use Cessation Counseling consists of the 5As:

(I) Asking the patient to describe their smoking use;

(II) Advising the patient to quit;

(III) Assessing the willingness of the patient to quit;

(IV) Assisting the patient with referrals and plans to quit; and

(V) Arranging for follow-up.

(ii) Up to eight sessions are covered per year per individual.

(iii) Smoking and Tobacco Use Cessation Counseling is a covered service when performed by physicians, physician assistants, nurse practitioners, nurse midwives, and Oklahoma State Health Department and FQHC nursing staff. It is reimbursed in addition to any other appropriate global payments for obstetrical care, PCP capitation payments, evaluation and management codes, or other appropriate services rendered. It must be a significant, separately identifiable service, unique from any other service provided on the same day.

(iv) Chart documentation must include a separate note and signature along with the patient specific information addressed in the five steps and the time spent by the practitioner performing the counseling. Anything under three minutes is considered part of a routine visit.

(2) General exclusions include the following:

(A) Inpatient diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery ~~including removal of benign skin lesions~~.

(C) Services of two physicians for the same type of service to the same patient at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a

new plan of care in response to changes in the patient's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the patient's care, the codes for subsequent hospital care should be used.

(D) Refractions and visual aids.

(E) Separate payment for pre and post-operative care when payment is made for surgery.

(F) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(G) Sterilization of persons who are under 21 years of age, mentally incompetent or institutionalized. Reversal of sterilization procedures for the purposes of conception.

(H) Non-therapeutic hysterectomy.

(I) Medical services considered to be experimental or investigational.

(J) Payment for more than four outpatient visits per month (home or office) per patient except those visits in connection with family planning, or related to emergency medical conditions.

(K) Payment for more than two nursing facility visits per month.

(L) More than one inpatient visit per day per physician.

(M) Physician supervision of hemodialysis or peritoneal dialysis.

(N) Physician services which are administrative in nature and not a direct service to the patient including such items as quality assurance, utilization review, treatment staffing, tumor board, dictation, and similar functions.

(O) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.

(P) Payment for the services of physicians' assistants, social workers, licensed family counselors, registered nurses or other ancillary staff, except as specifically set out.

(Q) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (See OAC 317:30-5-6 or 317:30-5-50.)

(R) Night calls or unusual hours.

(S) Speech and Hearing services.

(T) Treatment for obesity, including weight reduction surgery.

(U) Mileage.

(V) Other than routine hospital visit on date of discharge unless patient expired.

(W) Direct payment to perfusionist as this is considered part of the hospital cost.

(X) Inpatient chemical dependency treatment.

(Y) Fertility treatment.

(Z) Routine immunizations.

(AA) Payment for removal of benign skin lesions unless medically necessary.

(b) **Children.** Payment is made to physicians for medical and surgical services for persons under the age of 21 within the scope of the Authority's medical programs, provided the services are medically necessary for the diagnosis and treatment of illness or injury, or to improve the functioning of a malformed body member. Medical and surgical services for children are comparable to those listed for adults. In addition to those services listed for adults, the following services are covered for children.

(1) **Pre-authorization of inpatient psychiatric services.** All inpatient psychiatric services for patients under 21 years of age must be prior authorized by an agency designated by the Oklahoma Health Care Authority. All psychiatric services will be prior authorized for an approved length of stay. Non-authorized inpatient psychiatric services will not be Medicaid compensable.

(A) Effective October 1, 1993, all residential and acute psychiatric services will be authorized based on the medical necessity criteria as described in OAC 317:30-5-46.

(B) Out of state placements will not be authorized unless it is determined that the needed medical services are more readily available in another state or it is a general practice for recipients in a particular border locality to use resources in another state. If a medical emergency occurs while a client is out of the state, treatment for medical services will be covered in the same way as they would be covered within the state. A prime consideration for placements will be proximity to the family or guardian in order to involve the family or guardian in discharge and reintegration planning.

(2) **General acute care inpatient service limitations.** All general acute care inpatient hospital services for persons under the age of 21 are not limited. All inpatient care must be medically necessary.

(3) **Procedures for requesting extensions for inpatient services.** The physician and/or facility must provide necessary justification to enable OHCA, or its designated agent, to make a determination of medical necessity and appropriateness of treatment options.

(A) Extension requests for psychiatric admissions must be submitted to the OHCA or its designated agent. Extension requests must contain the appropriate documentation which validates the need for continued treatment in accordance with the medical necessity criteria described in OAC 317:30-5-46. Requests shall be made prior to the expiration of the approved inpatient stay.

(B) If a denial decision is made, a reconsideration request may be made directly to the OHCA, or its designated agent and should occur within 3 days of the denial notification due to the timeliness of processing such a request with the patient still in the facility. The request for reconsideration shall include new and/or

additional medical information to justify the need for continued care.

(4) **Utilization control requirements for psychiatric beds.** Medicaid utilization control requirements for inpatient psychiatric services for persons under 21 years of age apply to all hospitals and residential psychiatric treatment facilities.

(5) **Early and periodic screening diagnosis and treatment program.** Payment is also made to eligible providers for Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) of individuals under age 21. These services include medical, dental, vision, hearing and other necessary health care. Refer to OAC 317:30-3-65.2 through 317:30-3-65.11 for specific guidelines. ~~The EPSDT program is a comprehensive child health program, designed for ensuring the availability of and access to required health care resources and helping parents and guardians of Medicaid eligible children effectively use these resources. An effective EPSDT program assures that health problems found are diagnosed and treated early before they become more complex and their treatment more costly. The physician plays a significant role in educating parents and guardians in all services available through the EPSDT program. The receipt of an identified EPSDT screening makes the Medicaid child eligible for all necessary follow-up care that is within the scope of the Medicaid Program. Federal regulations also require that diagnosis and treatment be provided for conditions identified during a screening whether or not they are covered under the Authority's current program. Such services must be allowable under the Federal Regulations. These services must be necessary to ameliorate or correct defects and physical or mental illnesses or conditions and will require prior authorization. The following services are covered under EPSDT:~~

~~(A) The Oklahoma Program adopted the following recommendations which includes at least:~~

~~(i) Six screenings during the first year of life;~~

~~(ii) Two screenings in the second year;~~

~~(iii) One screening yearly for ages two thru five years; and~~

~~(iv) One screening every other year for ages 6 thru 20 years.~~

~~(B) Periodicity schedules for screening, dental, vision and hearing, and other services include:~~

~~(i) **Screening services.** Comprehensive examinations performed by a licensed physician, dentist or other provider qualified under State law to furnish primary medical and health services are covered. See OAC 317:30-3-47 for EPSDT services. Screenings must include all of the following:~~

~~(I) A comprehensive health and developmental history (including assessment of both physical and mental health development);~~

~~(II) A comprehensive unclothed physical exam;~~

~~(III) Appropriate immunizations according to age and health history;~~

~~(IV) Laboratory tests (including lead blood level assessment appropriate to age and risk); and~~

~~(V) Health education (including anticipatory guidance).~~

~~(ii) **Vision services.** At a minimum, vision services include diagnosis and treatment for defects in vision, including eyeglasses. In addition, payment is made for glasses for children with congenital aphakia or following cataract removal.~~

~~(iii) **Dental services.** At a minimum, dental services include relief of pain and infections, restoration of teeth and maintenance of dental health. Dental services may not be limited to emergency services. Coverage also includes inpatient services in an eligible participating hospital, outpatient dental screening every 12 months, two bite wing x-rays, and/or oral prophylaxis one each 12 months; other restoration, repair and/or replacement of dental defects after the treatment plan submitted by a dentist has been authorized. This includes amalgam and composite restoration, pulpotomies, chrome steel crowns, anterior root canals, pulpectomies, band and loop space maintainers, cement bases, acrylic flippers, and lingual arch bars. (Refer to Dental Provider Manual for limitations.)~~

~~(iv) **Hearing services.** At a minimum, hearing services include diagnosis and treatment for defects in hearing, including hearing aids. Hearing aid evaluation once every 12 months and purchase of a hearing aid when prescribed as a result of the hearing aid evaluation.~~

~~(v) **Immunizations.** Federal legislation created the Vaccine for Children Program to be effective October 1, 1994. Vaccines will be provided free of charge to all enrolled providers for Medicaid eligible children. Participating providers may bill for an administration fee to be set by HCFA on a regional basis. They may not refuse to immunize based on inability to pay the administration fee. Medicaid will continue to pay non-participating providers for vaccines and an administration fee of $2.10 until April 1, 1995, when Federal Financial Participation will no longer be available.~~

~~(vi) **Appropriate laboratory tests.** Use medical judgement in determining the applicability of the laboratory tests or analyses to be performed. If any laboratory tests or analyses are medically contraindicated at the time of the screening, provide them when no longer medically contraindicated laboratory tests should only be given when medical judgement determines they are appropriate. However, laboratory tests should not be routinely administered.~~

~~(I) As appropriate, conduct the following laboratory tests: Anemia test; Sickle cell test. If a child has been properly tested once for sickle cell disease, the test need not be repeated. Tuberculin test. Give a tuberculin test to every child who has not received one within a year.~~

~~(II) Lead toxicity screening. Where age and risk factors indicate it is medically appropriate to perform a blood level assessment, a blood level assessment is mandatory. See OAC 317:30-3-50 for required lead screening guidelines.~~

~~(vii) **Other necessary health care.** Other necessary health care, diagnostic services, treatment and other measures to correct or ameliorate defects, and physical and mental illnesses and conditions discovered by the screening services.~~

~~(I) Interperiodic screenings outside the periodicity schedule for screening examinations are allowed at necessary intervals when a medical condition is suspected.~~

~~(II) Outpatient care for acute physical injury.~~

~~(III) Prescribed drugs beyond the prescription limitation.~~

~~(IV) Inpatient psychotherapy for individuals under 21 years of age when prior authorized. Payment is made to psychologists who are licensed to practice.~~

~~(V) Inpatient psychological testing. Limited to one hour per recipient each 12 months. If medically necessary, additional hours will be prior authorized. Payment is made to psychologists who are licensed to practice.~~

~~(VI) Outpatient psychological services for eligible individuals under 21 years of age when prior authorized. See (V) of this unit for limitations.~~

(6) **Child abuse/neglect findings.** Instances of child abuse and/or neglect discovered through screenings and regular exams are to be reported in accordance with State Law. Title 21, Oklahoma Statutes, Section 846, as amended, states in part: *Every physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents, and interns, examining, attending, or treating a child under the age of eighteen (18) years and every registered nurse examining, attending or treating such a child in the absence of a physician or surgeon, and every other person having reason to believe that a child under the age of eighteen (18) years has had physical injury or injuries inflicted upon him or her by other than accidental means where the injury appears to have been caused as a result of physical abuse or neglect, shall report the matter promptly to the county office of the Department of Human Services in the county wherein the suspected injury occurred. Providing it shall be a misdemeanor for any person to knowingly and willfully fail to promptly report an incident as provided above. Persons reporting such incidents of abuse and/or neglect in accordance with the law are exempt from prosecution in civil or criminal suits that might be brought as a result of the report.*

(7) **General exclusions.** The following are excluded from coverage for persons under the age of 21:

(A) Inpatient diagnostic studies that could be performed on an outpatient basis.

(B) Services or any expense incurred for cosmetic surgery unless the physician certifies the procedure emotionally necessary.

(C) Services of two physicians for the same type of service to the same patient at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the patient's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the patient's care, the codes for subsequent hospital care should be used.

(D) Separate payment for pre and post-operative care when payment is made for surgery.

(E) Payment to the same physician for both an outpatient visit and admission to hospital on the same date.

(F) Sterilization of persons who are under 21 years of age.

(G) Non-therapeutic hysterectomy.

(H) Medical Services considered to be experimental or investigational.

(I) More than one inpatient visit per day per physician.

(J) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest. (See OAC 317:30-5-6 or 317:30-5-50.)

(K) Physician supervision of hemodialysis or peritoneal dialysis.

(L) Physician services which are administrative in nature and not a direct service to the patient including such items as quality assurance, utilization review, treatment staffing, tumor board, dictation, and similar functions.

(M) Payment for the services of physicians' assistants except as specifically set out.

(N) Direct payment to perfusionist as this is considered part of the hospital cost.

(O) Treatment of obesity including weight reduction surgery.

(P) Charges for completion of insurance forms, abstracts, narrative reports or telephone calls.
(Q) Night calls or unusual hours.
(R) Mileage.
(S) Other than routine hospital visit on date of discharge unless patient expired.
(T) Tympanometry.

(c) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services. For in-State physicians, claims filed with Medicare Part B should automatically cross over to OHCA. The explanation of Medicare Benefits will reflect a message that the claim was referred to Medicaid. If such a message is not present, a claim for coinsurance and deductible must be filed with Medicaid within 90 days of the date of Medicare payment in order to be considered timely filed. The Medicare EOMB must be attached to the claim. If payment was denied by Medicare Part B, and the service is a Medicaid covered service, mark the claim "denied by Medicare".

(1) Out of state claims will not "cross over". Providers must file a claim for coinsurance and/or deductible within 90 days of the Medicare payment. The Medicare EOMB must be attached to the claim.

(2) Claims filed under Medicaid must be filed within one year from the date of service. For dually eligible individuals, to be eligible for payment of coinsurance and/or deductible under Medicaid, a claim must be filed with Medicare within one year from the date of service.

PART 5. PHARMACISTS

317:30-5-77.2. Prior authorization

(a) **Definition.** The term prior authorization means an approval for payment by OHCA to the pharmacist before a prescription is dispensed by the pharmacist.

(b) **Process.** Because of the required interaction between a prescribing provider (such as a physician) and a pharmacist to receive a prior authorization, OHCA allows a pharmacist up to a 30 calendar day period from the point of sale notification to provide the data necessary for OHCA to make a decision regarding prior authorization. Should a pharmacist fill a prescription prior to the actual authorization he/she takes a business risk that the claim for filling the prescription will be denied. In the case that information regarding the prior authorization is not provided within the 30 day calendar period, claims will be denied.

(c) **Documentation.** OHCA administers a prior authorization program through a contract with an agent. Prior Authorization requests with clinical exceptions must be mailed or faxed to the Medication Authorization unit of the agent. Other authorization requests, claims processing questions and questions pertaining to DUR alerts must be addressed by contacting the Pharmacy help desk. Authorization requests with complete information are reviewed and a response returned to the dispensing pharmacy within 24 hours.

(d) **Emergencies.** In an emergency situation the Health Care Authority will authorize a 72 hour supply of medications to a client. The authorization for a 72 hour emergency supply of medications does not count against the Medicaid limit described in OAC 317:30-5-72(a)(1).

(e) **Utilization and scope.** There are three reasons for the use of prior authorization: utilization controls, product based controls, and scope controls. Scope controls refer to constraints used to insure a drug is used for approved indications and is therapeutically appropriate.

(1) **Utilization.**

(A) **Quantity.** Toradol is covered for eligible individuals for a quantity up to 22 tablets or a 5 day supply whichever is less, each month. Prior authorization is required when additional coverage is medically necessary beyond this limit.

(B) **Duration.**

(i) **Smoking cessation products.** A 90-day smoking cessation benefit consisting of Zyban, prescription or non-prescription nicotine replacement products, or Zyban/nicotine replacement combination is covered once per twelve months. Coverage beyond 90 days requires prior authorization and proof of enrollment in a behavior modification program, such as the Oklahoma Tobacco Helpline, ~~or~~ a manufacturer's telephone counseling program, or the 5As (Ask, Advise, Assess, Assist and Arrange) Smoking and Tobacco Use Cessation Counseling.

(ii) **Benzodiazepines and barbiturates.** Selected Barbiturates and Benzodiazepines are covered for eligible individuals for 90 days of therapy in the previous 360 days. Prior authorization is required for other medications in this category and when additional coverage is medically necessary beyond this limit.

(iii) **Hypnotics.** Hypnotic medications are covered for eligible individuals for 90 days of therapy in the previous 360 days. Prior authorization is required when additional coverage is medically necessary beyond this limit.

(2) **Scope.**

(A) **Antihistamines.** Legend antihistamines are covered only after a previous trial with an over-the-counter antihistamine. Over-the-counter non-sedating antihistamines are a covered benefit for children under 21 years of age. The trial should be with an antihistamine that exhibits comparable characteristics to the legend alternative. Also, the trial should have been in the last month and be of adequate dose and duration. A fourteen day trial of an over-the-counter non-sedating antihistamine is required prior to approval of a legend product for all clients.

(B) **Growth Hormone.** Growth Hormone is a covered medication via the prior authorization program provided the patient meets the applicable criteria for initiation and continuance of treatment. The following are the specific indications in which growth hormone therapy will be considered for coverage:

(i) the treatment of short stature, Turner's syndrome, hypoglycemia related growth hormone deficiency;

(ii) physiologic replacement for adults who previously met growth hormone deficiency guidelines as children; and

(iii) catabolic wasting in AIDS patients.

(C) **Anorexiants.** Limited anorexiant coverage is available for the treatment of Attention Deficit Hyperactivity Disorder (ADHD) and Narcolepsy through Product Based Prior Authorization.

(D) **TB related medications.** Certain drugs prescribed for the treatment of TB related morbidities require prior authorization.

(E) **Clopidigrel (Plavix™).** Clodpidigrel is covered for eligible individuals through the prior authorization process. Authorization will be granted to individuals with diagnoses for which an approved indication exists and the individual has a contra-indication for aspirin use or has a therapeutic failure with previous aspirin therapy.

(F) **Multiple indication medications.** Medications which have been approved by the FDA for multiple indications may be subject to a scope-based prior authorization when at least one of the approved indications places that drug into a therapeutic category or treatment class for which a prior authorization is required. Prior authorizations for these drugs may be structured as step therapy or a tiered approach as recommended by the Drug Utilization Review Board and approved by the OHCA Board of Directors.

(G) Prior authorization may be required to assure compliance with FDA approved and/or medically accepted indications, dosage, duration of therapy, quantity, or other appropriate use criteria including pharmacoeconomic consideration.

[OAR Docket #06-1017; filed 5-22-06]

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

[OAR Docket #06-998]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. General Provider Policies
Part 3. General Medical Program Information
317:30-3-59. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 63. Ambulatory Surgical Centers
317:30-5-566. [AMENDED]
(Reference APA WF # 05-20)
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Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
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(Reference APA WF # 05-15)
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Agency rules are revised in order to allow reimbursement for the removal of benign skin lesions for adults when medically necessary. Currently, rules exclude payment for cosmetic surgery including the removal of all benign skin lesions for adults. Rules are in need of revision to allow payment for the removal of benign skin lesions for adults when medically necessary. Other revisions supersede emergency rules previously approved by the Governor in APA WF # 05-15 related to the modification of the acute inpatient hospital services reimbursement from a level of care per diem system to a Diagnosis Related Group (DRG) reimbursement system.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006;

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 3. GENERAL MEDICAL PROGRAM INFORMATION

317:30-3-59. General program exclusions - adults

The following are excluded from Medicaid coverage for adults:

(1) Inpatient diagnostic studies that could be performed on an outpatient basis.

(2) Services or any expense incurred for cosmetic surgery~~, including removal of benign skin lesions~~.

(3) Services of two physicians for the same type of service to the same patient at the same time, except when warranted by the necessity of supplemental skills. When supplemental skills are warranted, the initial consultation is reported utilizing the appropriate CPT code for inpatient consultations. Follow-up consultations include monitoring progress, recommending management modifications or advising on a new plan of care in response to changes in the patient's status. If the consultant physician initiates treatment at the initial consultation and participates thereafter in the patient's care, the codes for subsequent hospital care should be used.

(4) Refractions and visual aids.

(5) Separate payment for pre and post-operative care when payment is made for surgery.

(6) Reversal of sterilization procedures for the purposes of conception.

(7) Treatment for obesity.

(8) Non therapeutic hysterectomies. Therapeutic hysterectomies require that the following information to be attached to the claim:

(A) a copy of an acceptable acknowledgment form signed by the patient, or,

(B) an acknowledgment by the physician that the patient has already been rendered sterile, or,

(C) a physician's certification that the hysterectomy was performed under a life-threatening emergency situation.

(9) Induced abortions, except when certified in writing by a physician that the abortion was necessary due to a physical disorder, injury or illness, including a life-endangering physical condition caused by or arising from the pregnancy itself, that would place the woman in danger of death unless an abortion is performed, or that the pregnancy is the result of an act of rape or incest.

(10) Medical services considered to be experimental.

(11) Services of a Certified Surgical Assistant.

(12) Services of a Chiropractor. Payment is made for Chiropractor services on Crossover claims for coinsurance and/or deductible only.

(13) Services of a Registered Physical Therapist.

(14) Services of a Psychologist.

(15) Services of a Speech and Hearing Therapist.

~~(16) Physician and hospital services in a general acute care hospital beyond the 24 day compensable hospital period per person per State fiscal year.~~

(~~17~~16) Payment for more than four outpatient visits per month (home, office, outpatient hospital) per patient, except those visits in connection with family planning or emergency medical condition.

(~~18~~17) Payment for more than two nursing home visits per month.

(~~19~~18) More than one inpatient visit per day per physician.

(19) Payment for removal of benign skin lesions unless medically necessary.

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 63. AMBULATORY SURGICAL CENTERS

317:30-5-566. Outpatient surgery services

The covered facility services are defined as those services furnished by an ASC or OHF in connection with a covered surgical procedure.

(1) **Services included.** Services included in the facility reimbursement rate are:

(A) Nursing, technicians, and other related services. These include all services in connection with covered procedures furnished by nurses and technical personnel who are employees of the facility. In addition to the nursing staff, this category would include orderlies and others involved in patient care.

(B) Use by the patient of the facility. This category includes operating and recovery rooms, patient preparation areas, waiting rooms, and other areas used by the patient or offered for use by the patient's relatives in connection with surgical services.

(C) Drugs, biologicals, surgical dressings, supplies, splints, casts, appliances and equipment. This category includes all supplies and equipment commonly furnished by the facility in connection with surgical procedures, including any drugs and biologicals administered while the patient is in the facility. Surgical dressings, other supplies, splints, and casts include only those furnished by the facility at the time of surgery. Additional supplies and materials furnished later would generally be furnished as incident to a physician's service and not as a facility service. Supplies include those required for both the patient and facility personnel, i.e., gowns, masks, drapes, hoses, scalpels, etc., whether disposable or reusable.

(D) Diagnostic or therapeutic items and services directly related to the surgical procedures. Payment to the facility includes items and services furnished by facility staff in connection with covered surgical procedures. These diagnostic tests include but are not limited to tests such as urinalysis, blood hemoglobin or hematocrit, CBC and fasting blood sugar, etc.

(E) Administrative, recordkeeping and housekeeping items and services. These include the general administrative functions necessary to run the facility, such as scheduling, cleaning, utilities, rent, etc.

(F) Blood, blood plasma, platelets, etc. Under normal circumstances, blood and blood fractions furnished during the course of the procedure will be included in the payment for the facility charge.

(G) Materials for anesthesia. These include the anesthetic and any materials necessary for its administration.

(2) **Services not included in facility reimbursement rates are:**

(A) Physicians' services. This category includes most services performed in the facility which are not considered facility services. The term physicians' services includes any pre/post-operative services, such as office visits, consultations, diagnostic tests, removal of stitches, changing of dressings, or other services which the individual physician usually includes in a set "global" fee for a given surgical procedure.

(B) The sale, lease or rental of durable medical equipment (DME) to patients for use in their homes. If the facility furnishes items of DME to patients it should be treated as a DME supplier and this requires a separate contract and separate claim form. Coverage of DME is limited to the scope of the Authority's Medical Programs.

(C) Prosthetic devices. Prosthetic devices, whether implanted, inserted, or otherwise applied by covered surgical procedures are not included in the facility payment. One of the more common prostheses is intraocular lenses (IOL's). These should be billed as a separate line item.

(D) Ambulance services. If the facility furnishes ambulance services, they are covered separately as ambulance services if otherwise compensable under the Authority's Medical Programs. This requires a separate contract and a separate claim form.

(E) Leg, arm, back and neck braces. These items are not included in the facility payment. Payment is limited to the scope of the Authority's Medical Programs.

(F) Artificial legs, arms and eyes. This equipment is not considered part of a facility service and is not included in the facility payment rate. Payment is limited to the scope of the Authority's Medical Programs.

(G) Services of an independent laboratory. Payment for laboratory services is limited to the scope of the Authority's Medical Programs.

(H) Reimbursement - facility services. The facility services are reimbursed according to the group in which the surgical procedure is listed. If more than one surgical procedure is performed at the same setting, reimbursement will be made for only the major procedure. Reimbursement will be made at a state-wide payment rate based on Medicare's established groups as adapted for Medicaid.

(3) **Compensable procedures.** The List of Covered Surgical Procedures in (1) of this Section sets out those procedures for which the Authority will recognize a facility charge if otherwise compensable under the Authority's Medical Programs. If a procedure code is not on the list the Authority will not pay a facility charge.

(A) The inclusion of a procedure on this list does not in any way change any of the overall coverage limitations or exclusions of the Medicaid program. For instance, the program generally excludes coverage for cosmetic surgery, surgery for obesity, and sexual reassignment~~, and removal of benign skin lesions~~. This list sets out the coverage and payment provisions if the procedure is otherwise compensable.

(B) The procedures are listed by body system, HCPCS codes, a brief description of the procedure and the applicable group payment rate.

(C) The HCPCS codes further identify the compensable procedures and should be used in billing.

[OAR Docket #06-998; filed 5-22-06]

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

[OAR Docket #06-1018]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. General Provider Policies
Part 5. Eligibility
317:30-3-78. [AMENDED]
Subchapter 5. Individual Providers and Specialties
Part 79. Dentists
317:30-5-695. [AMENDED]
317:30-5-695.1. [AMENDED]
317:30-5-695.2. [AMENDED]
317:30-5-696. [AMENDED]
317:30-5-698. through 317:30-5-701. [AMENDED]
317:30-5-703. through 317:30-5-705. [AMENDED]
(Reference APA WF # 05-42)
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ANALYSIS:
Dental rules are revised to clarify and update the dental services covered by Medicaid. Rule revisions are needed to provide clearer language and guidance to the providers on Medicaid compensability of dental services and to eliminate the discrepancies between the rules and current practices. These revisions bring Medicaid expectations into line with current practices and improve access to care for Medicaid eligible individuals. Other rules bring rules in line with permanent rules being submitted this same date in APA

WF # 05-40. Those rules are revised to establish payment for 5-15 minute, five step counseling sessions as treatment for pregnant women who smoke. The five step interventions are used during routine pre-natal office visits for smoking cessation and include the following five steps: Ask, Advise, Assess, Assist, and Arrange. Smoking during pregnancy is associated with maternal, fetal, and infant morbidity and mortality. An office-based protocol that systematically identifies pregnant women who smoke and offers treatment has been proven to increase quit rates. The rules establish reimbursement to providers for the provision of the "5A's" counseling intervention program to pregnant Medicaid recipients. This payment would be allowed in addition to the applicable global fee billing and any other appropriate and allowed treatment, and/or testing for which they are reimbursed.

CONTACT PERSON:

Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 5. ELIGIBILITY

317:30-3-78. Request for prior authorization for dental services

~~Request for Prior Authorization for Dental Services, Form CC-88,~~ The currently approved ADA form is used to request prior authorization for dental services that require a treatment plan or as indicated in Part 79 of Subchapter 5 of this Chapter. ~~Attach to the MS-MA-5 when requesting approval of services for an individual not currently eligible.~~

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 79. DENTISTS

317:30-5-695. Eligible dental providers

(a) Eligible dental providers in Oklahoma's Medicaid program are:

(1) ~~those persons~~ individuals licensed as dentists under 59 Oklahoma Statutes §§ 328.21, 328.22, and 328.23 (licensed dentists, specialty dentists and out of state dentists)~~,~~ ;

(2) ~~those persons~~ individuals issued permits as dental interns under 59 Oklahoma Statute § 328.26~~,~~ ;

(3) ~~those persons~~ individuals who are third and fourth year dental students at an accredited Oklahoma dental college~~,~~ ; and

(4) any ~~person~~ individual issued a license in another state as a dentist.

(b) All eligible providers must be in good standing with regard to their license. Any revocation or suspension status of a provider referenced in subsection (a) above renders the provider ineligible for payment or subject to recoupment under Medicaid.

317:30-5-695.1. Payment for eligible providers

To receive payment from the Oklahoma Health Care Authority, an eligible provider must:

(1) hold an active Medicaid contract with the OHCA; ~~and~~

(2) submit a claim form in the format required by the OHCA; and

(3) submit the claim timely to the OHCA.

317:30-5-695.2. Payment for dental interns and students

(a) For those eligible providers under OAC 317:30-5-695(a)(2) and (3) (dental interns who hold permits ~~and~~ or third and fourth year students), in addition to the requirements of OAC 317:30-5-695.1, the following requirements must be met for OHCA to pay a claim:

(1) the patient must be examined by an attending dentist in the dental training program;

(2) the care delivered to the Medicaid client by the student or intern must be supervised by the attending dentist; and

(3) the supervision by the attending dentist must be documented in the patient's medical record.

(b) Payment is made by the OHCA on behalf of the student or intern as provided above ~~will be made~~ to the attending dentist and/or the institution providing the dental service.

317:30-5-696. Coverage by category

Payment is made for dental services as set forth in this Section.

(1) **Adults.** Dental coverage for adults is limited to emergency extractions and Smoking and Tobacco Use Cessation Counseling. Payment ~~will be~~ is made for dental care for adults residing in private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and who have been approved for ICF/MR level of care, similar to the scope of services available to ~~persons~~ individuals under age 21. Payment is also made for medical and surgical services performed by a dentist, to the extent such services may be performed under State law either by a doctor of dental surgery or dental medicine, when those services would be covered if performed by a physician. Payment is made to Dentists~~,~~ who have received appropriate formal education in conscious (moderate) sedation, deep sedation, and general anesthesia and are qualified to use these modalities in practice. Training to competency in conscious (moderate) sedation techniques may be acquired at the predoctoral, postgraduate, graduate, or continuing education level. Dentists who wish to utilize conscious (moderate) sedation are expected to successfully complete formal training which is structured in accordance with the American Dental Association's educational guidelines as well as the board of Dentistry for the State in which they practice. The knowledge and

skills required for the administration of deep sedation and general anesthesia are beyond the scope of pre-doctoral and continuing education. Only dentists who have successfully completed an accredited/approved residency program in anesthesiology, for the administration of anesthetic agents will be permitted to provide and bill for this service. All anesthesia services must be provided in accordance with OAC 317:30-5-7.

~~(A) **Procedure codes.** The anesthesiologist is responsible for entering the correct anesthesia procedure code on the appropriate claim form. Anesthesia codes from the Physicians' Current Procedural Terminology should be used. Payment is made only for the major procedure during an operative session.~~

~~(B) **Modifiers.** All anesthesia procedure codes must have a modifier. Without the modifier, the claim will be denied. Payment rate is 100% of the OHCA allowable.~~

~~(C) **Qualifying circumstances.** Certain codes in the Medicine section of the CPT are used to identify extraordinary anesthesia services. The appropriate modifiers should be added to these codes. Additional payment can be made for extremes of age, total body hypothermia and controlled hypotension.~~

~~(D) **Hypothermia.** Hypothermia total body or regional is not covered unless medical necessity is documented and approved through review by the Authority's Medical Consultants.~~

~~(E) **Anesthesia with Blood Gas Analysis.** Blood gas analysis is part of anesthesia service. Payment for anesthesia includes payment for blood gas analysis.~~

~~(F) **Steroid injections.** Steroid injections administered by an anesthesiologist are covered as nerve block.~~

~~(G) **Stand by anesthesia.** Stand by anesthesia is not covered unless the physician is actually in the operating room administering medication, etc. If this is indicated, claim will be processed as if anesthesia was given. Use appropriate anesthesia code.~~

~~(H) **Other qualifying circumstances.** All other qualifying circumstances, i.e., physical status, emergency, etc. have been structured into the total allowable for the procedure.~~

~~(I) **Central venous catheter and anesthesia.** Payment for placement of central venous catheter, injection of anesthesia substance or similar procedures will be made only when the procedure is distinctly separate from the anesthesia procedure.~~

(2) **Home and community based waiver services for the mentally retarded (HCBWS).** All providers participating in the HCBWS must have a separate contract with ~~this Authority~~ the OHCA to provide services under the HCBWS. All services are prior authorized.

(3) **Children.** The OHCA Dental Program provides the basic medically necessary treatment. The ~~following~~ services listed below are compensable for eligible ~~persons~~ individuals under 21 years of age without prior authorization. ALL OTHER DENTAL SERVICES ~~FOR PERSONS UNDER 21 YEARS OF AGE AND ELIGIBLE ADULTS RESIDING IN PRIVATE ICF/MR's~~ MUST BE PRIOR AUTHORIZED. Anesthesia services are covered for children in the same manner as adults.

~~(A) Examination. Two dental examinations, two prophylaxis with/without topical fluoride treatment, and two bitewing x-rays once each twelve month period regardless of the number of dentists involved.~~ **Comprehensive oral evaluation.** Comprehensive oral evaluation must be performed and recorded for each new patient, or established patient not seen for more than 18 months. This procedure is allowed once each 18 month period.

(B) ~~Oral hygiene instructions. The dentist or registered dental hygienist shall instruct the patient or the responsible adult, if the child is under five years of age, in proper tooth brushing and flossing by actual demonstration. Verbal and/or written proper diet information should be discussed. This service shall include a new tooth brush and a small container of six or more yards of dental floss dispensed to the patient. This service is limited to once per 12 months.~~ **Periodic oral evaluation.** This procedure may be provided for a client of record if she or he has not been seen for more than six months.

(C) ~~Application of dental sealants. (A.D.A. certified materials). All teeth must be caries free on all surfaces to be eligible for this service.~~ **Emergency examination/limited oral evaluation.** This procedure is not compensable within two months of a periodic oral examination or if the client is involved in active treatment unless trauma or acute infection is the presenting complaint.

(D) ~~Emergency examinations. This procedure will not be allowed within two months of a periodic oral examination, same provider, same client.~~ **Emergency extractions.** This procedure is only for the relief of pain or treatment of acute infection.

(E) ~~Emergency extractions. For the relief of pain or treatment of acute infection.~~ **Oral hygiene instructions.** The dentist or designated qualified dental staff shall instruct the client or the responsible adult, if the child is under five years of age, in proper tooth brushing and flossing by actual demonstration. Verbal and/or written proper diet information should be discussed. This service includes a new tooth brush, disclosing tablets if available, and a small container of six or more yards of dental floss dispensed to the patient when appropriate. This service is limited to once per 12 months.

(F) ~~Injectable antibiotics.~~ **Radiographs (x-rays).** To be Medicaid compensable, x-rays must be determined as medically necessary by the dentist, of diagnostic quality and taken within the allowable limits of the program. The referring dentist is responsible for providing properly identified x-rays of acceptable quality with a referral.

(G) ~~Composite restorations in vital or successfully treated non-vital permanent anterior teeth. Composite restorations in vital primary incisors; tooth numbers O and P to age 4.0 years, numbers E and F to age 5.0 years, numbers N and Q to 5.0 years, and numbers D and G to 6.0 years.~~ **Dental sealants.** Tooth numbers 2 through 5, 12 through 15, 18 through 21, and 28 through 31 must be caries free on all surfaces to be eligible for this service. This service is compensable only once per lifetime. Replacement of lost sealants will be at no cost to the OHCA. Tooth numbers 03, 14, 19, and 30 are eligible for sealants from eruptions through eight years of age. Tooth numbers 02, 15, 18 and 31 are eligible for sealants from eruptions through 13 years of age. Tooth numbers 04, 05, 12, 13, 20, 21, 28, and 29 from eruptions through 14 years of age.

(H) ~~Amalgam or composite restorations in posterior, vital permanent teeth. Amalgam or composite restoration in vital posterior primary teeth with 70 percent or more root structure remaining or more than 12 months prior to normal exfoliation.~~ **Dental prophylaxis.** This procedure is provided once every 184 days including topical application of fluoride.

(I) ~~Chrome steel crowns. Applies to all primary teeth when the child is five years or less and 70 percent or more of the root structure remains, or when the tooth would not exfoliate within the next 12 months. This applies to teeth with pulpotomies or pulpectomies if the above conditions exist, permanent teeth where more than three surfaces of decay exists or where cuspal occlusion is lost due to decay or accident. Chrome steel crowns are the treatment of choice for the above conditions on permanent teeth unless they are abutment teeth for fixed or removable prosthetics prior to age 16.0 years. Pre operative periapical x-rays must be available for review, if requested.~~ **Composite restorations.**

(i) This procedure is compensable for primary incisors as follows:

(I) tooth numbers O and P to age 4.0 years;

(II) tooth numbers E and F to age 6.0 years;

(III) tooth numbers N and Q to 5.0 years; and

(IV) tooth numbers D and G to 6.0 years.

(ii) The procedure is also allowed for use in all vital and successfully treated non-vital permanent anterior teeth.

(iii) Class I and II composite restorations are allowed in posterior teeth; however, the OHCA has certain restrictions for the use of this restorative material. (See OAC 317:30-5-699).

(J) ~~Pulpotomies. All primary molars having at least 70 percent or more of their root structure remaining or more than 12 months prior to normal exfoliation; primary incisor teeth numbers O and P before age 4.0 years; numbers E and F before 5.0 years; numbers N and Q before 5.0 years; and numbers D and G before 6.0 years, with the 70 percent root structure rule applied. Pre and post operative periapical x-rays must be available for review, if requested.~~ **Amalgam.** Amalgam restorations are allowed in:

(i) posterior primary teeth when:

(I) 50 percent or more root structure is remaining;

(II) the teeth have no mobility; or

(III) the procedure is provided more than 12 months prior to normal exfoliation.

(ii) any permanent tooth, determined as medically necessary by the treating dentist.

(K) ~~Pulpectomies. All primary teeth having 70 percent or more root structure remaining or at least 12 months before normal exfoliation. Pre and post operative periapical x-rays must be available for review, if requested.~~ **Stainless steel crowns.** The use of stainless steel crowns is allowed as follows:

(i) Stainless steel crowns are allowed if the child is five years of age or under and 70 percent or more of the root structure remains or when the tooth would not exfoliate within the next 12 months.

(ii) Stainless steel crowns are treatment of choice for primary teeth with pulpotomies or pulpectomies, if the above conditions exist, and for primary teeth where three surfaces of extensive decay exist or where cuspal occlusion is lost due to decay or accident.

(iii) Stainless steel crowns are the treatment of choice on posterior permanent teeth that have completed endodontic therapy, if more than three surfaces or cuspal occlusion are lost due to decay prior to age 16.0 years.

(iv) Preoperative periapical x-rays must be available for review, if requested.

(L) ~~Anterior root canals. Permanent teeth numbers 6, 7, 8, 9, 10, 11, and 22, 23, 24, 25, 26, 27, where there are no other missing teeth in the same arch requiring replacement, unless numbers 6, 11, 22, or 27 are abutments for a prosthesis. Accepted A.D.A. filling materials must be used. Materials such as N-2 or similar formulas are not acceptable. Pre and post operative periapical x-rays must be available for review, if requested.~~ **Pulpotomies and pulpectomies.**

(i) Therapeutic pulpotomies are allowable for molars and teeth numbers listed below. Pre and post operative periapical x-rays must be available for review, if requested.

(I) Primary molars having at least 70 percent or more of their root structure remaining or more than 12 months prior to normal exfoliation;

(II) Tooth numbers O and P before age 5.0 years;

(III) Tooth numbers E and F before 6.0 years;

(IV) Tooth numbers N and Q before 5.0 years; and

(V) Tooth numbers D and G before 6.0 years.

(ii) Pulpectomies are allowed for primary teeth if exfoliation of the teeth is not expected to occur for at least one year or if 70 percent or more of root structure is remaining.

(M) ~~Space maintainers.~~ **Anterior root canals.** Payment is made for the services provided in accordance with the following:

(i) ~~Band and loop type space maintenance of all primary molars where permanent successor is missing or where succedaneous tooth is more than 5mm below the crest of the alveolar ridge or where the successor tooth would not normally erupt in the next 12 months. First primary molars will not be allowed space maintenance after age 8 years if the second primary and first permanent molars are present and in cuspal interlocking occlusion whether normal relationship is or is not present. If there are missing teeth bilaterally in the same arch, under the above guidelines, lingual arch is the treatment of choice. The teeth numbers shown on the claim should be that of the missing teeth. Post operative bitewing x-rays must be available for review.~~ This procedure is done for permanent teeth when there are not other missing teeth in the same arch requiring replacement.

(ii) ~~Lingual arch bar is to be used where multiple missing teeth exist in the same arch. The requirements are the same as for band and loop space maintainer. Multiple missing upper anterior primary incisors may be replaced with the appliance to age 5.0 years to prevent abnormal swallowing habits. Post operative bitewing x-rays must be available. Anterior saddle and pontics may be added to this appliance to replace teeth D, E, F, and G to age 5.0 years. See code number attachment (prosthetic section) for proper code number for primary anterior teeth. Saddle (includes up to 4 teeth or pontics) is further described under services requiring prior authorization, #g.~~ Acceptable ADA filling materials must be used.

(iii) ~~Acrylic flippers are to be used for single or multiple anterior permanent tooth replacement to age 18.0 years.~~ Preauthorization is required if the patient's treatment plan involves more than four anterior root canals.

(iv) Teeth with less than 50 percent of clinical crown should not be treatment-planned for root canal therapy.

(v) Pre and post operative periapical x-rays must be available for review.

(vi) Pulpotomy may be performed for the relief of pain while waiting for the decision from the OHCA.

(vii) Providers are responsible for any follow-up treatment required due to a failed root canal therapy for 24 month post completion.

(viii) Endodontic treated teeth should be restored to limited occlusal function and all contours should be replaced. These teeth are not automatically approved for any type of crown.

(N) ~~Cement base. To be used where pulp cap, pulpotomy or pulpectomy is not necessary. Cement bases are for very deep restorations requiring thermal shock protection for the pulpal tissues. Cement bases are not cavity liners such as cavitec, CAOH, or similar quick set products. Acceptable cement bases are IRM, zinc oxide and eugenol, glass ionomers, or crown and bridge cements. These are indirect pulp caps. Pre operative radiographs must be available for review, if requested.~~ **Space maintainers.** Certain limitations apply with regard to this procedure. Providers are responsible for recementation of any maintainer placed by them for six months post insertion.

(i) **Band and loop type space maintenance.** This procedure must be provided in accordance with the following guidelines:

(I) **Procedure.** This procedure is compensable for all primary molars where permanent successor is missing or where succedaneous tooth is more than 5mm below the crest of the alveolar ridge or where the successor tooth would not normally erupt in the next 12 months.

(II) First primary molars are not allowed space maintenance after age eight years if the second primary and first permanent molars are present and in cuspal interlocking occlusion regardless of the presence or absence of normal relationship.

(III) If there are missing teeth bilaterally in the same arch, under the above guidelines, bilateral space maintainer is the treatment of choice.

(IV) The teeth numbers shown on the claim should be those of the missing teeth.

(V) Post operative bitewing x-rays must be available for review.

(ii) **Lingual arch bar.** Payment is made for the services provided in accordance with the following:

(I) Lingual arch bar is used where multiple missing teeth exist in the same arch.

(II) The requirements are the same as for band and loop space maintainer.

(III) Multiple missing upper anterior primary incisors may be replaced with the appliance to age 6.0 years to prevent abnormal swallowing habits.

(IV) Pre and post operative x-rays must be available.

(iii) **Interim partial dentures.** These dentures are used for single or multiple anterior permanent tooth replacement to age 16.0 years.

(O) ~~Pulp caps (direct). A.D.A. accepted CAOH containing materials.~~ **Analgesia.** Use of nitrous oxide is compensable for four occurrences per year.

(P) **Pulp caps (direct).** ADA accepted CAOH containing material must be used.

(~~P~~Q) ~~Sedative treatment. Temporary restoration must be ADA acceptable materials.~~ **Sedative treatment.** ADA acceptable materials must be used for temporary restoration. This restoration is used for very deep cavities to allow the tooth an adequate chance to heal itself or an attempt to prevent ~~doing a pulpotomy, pulpectomy or root canal~~ the need for root canal therapy. This restoration, when properly used, ~~includes~~ is intended to relieve pain and may include a direct or indirect pulp cap. ~~This is~~ The combination of a pulp cap and sedative fill is the only ~~restoration~~ restorative procedure allowed per tooth per day. Subsequent restoration of the tooth is allowed after a minimum of 30 days.

(~~Q~~R) ~~History and physical.~~ **History and physical.** ~~For~~ Payment is made for services for the purpose of admitting a patient to a hospital for dental treatment.

(S) **Local anesthesia.** This procedure is included in the fee for all services.

(T) **Smoking and Tobacco Use Cessation Counseling.** Smoking and Tobacco Use Cessation Counseling is covered when performed utilizing the five intervention steps of asking the patient to describe his/her smoking, advising the patient to quit, assessing the willingness of the patient to quit, assisting with referrals and plant to quit, and arranging for follow-up. Up to eight sessions are covered per year per individual who has documented tobacco use. It is a covered service when provided by a Dentist in addition to other appropriate services rendered. Chart documentation must include a separate note, separate signature, and the patient specific information addressed in the five steps and the time spent by the practitioner performing the counseling. Anything under three minutes is considered part of a routine visit.

(4) **Individuals eligible for Part B of Medicare.**

(A) Payment is made utilizing the Medicaid allowable for comparable services. This is an all inclusive payment on assigned claims.

(B) Services which have been denied by Medicare as noncompensable should be filed directly with this Authority with a copy of the Medicare EOB attached.

317:30-5-698. Services requiring prior authorization

(a) Providers must have prior authorization for certain specified services before delivery of that service, unless the service is provided on an emergency basis. Emergency dental care is immediate service that must be provided to relieve the recipient from pain due to an acute infection, swelling, trismus or trauma. Requests for dental services requiring prior authorization ~~should~~ must be accompanied by sufficient documentation~~, i.e. study~~ . Study models (where indicated), ~~radiographs to substantiate need and documentation that the requested service would be within the scope of the OHCA Dental Program~~ x-rays, six point periodontal charting, comprehensive treatment plan and narrative may be requested. If the quality of the supporting material is such that a determination of authorization cannot be made, the material is returned to the provider. Any new documentation must be provided at the provider's expense.

~~(1) Requests for prior authorization should be filed on Form MS-MA-5. The request must include HCPCS code(s) and diagnosis for each service. If applicable, the tooth number and surface should also be indicated. CC-88 should be used to list this information. CC-88 does not replace the MS-MA-5. It is intended to be used by dentists as an attachment if additional space is needed. Supplies of both forms can be obtained from the local county DHS office. You will receive Form MS-S-4 which will notify you of the determination on your request for prior authorization. The authorization number shown on this form must be on your claim. Prior authorized services must be billed exactly as they appear on the prior authorization.~~

~~(2) Listed below are examples of services requiring prior authorization for persons under 21 and eligible ICF/MR residents. Minimum required records to be submitted with each request are right and left mounted bitewing x-rays and periapical films of tooth/teeth involved or the edentulous areas if not visible in the bitewings. If required x-rays to be sent are copies, each film must be identified as to left and right. The film must clearly identify the requested service. Tooth or teeth number(s) with surfaces involved should be listed and x-rays mounted and identified with client name, DHS case number, provider name and number. This should be stapled to Form MS-MA-5.~~

~~(A) **Local anesthesia.** This service is included in the fee for all routine services not requiring prior authorization. When services are approved that would require local anesthesia, the appropriate anesthesia will be authorized as well.~~

~~(B) **Posterior endodontics.** Pulpotomy should be performed for the relief of pain while waiting for the decision from OHCA on request for posterior endodontics. Only A.D.A. accepted filling materials are acceptable under OHCA policy. Posterior endodontics will not be considered if there are other teeth in the same arch requiring replacement.~~

~~(C) **Cast metal crowns or porcelain/metal crowns.** Criteria for approval of crowns is shown below. The conditions listed in (i) and (ii) should be clearly visible on the submitted x-rays. Routine core build-up(s) for authorized crowns are included in the fee for the crown. Dowel(s) or post(s) and core build-up(s) are not routinely provided with crowns for endodontically treated teeth. Porcelain/metal crowns will be considered only for tooth numbers 3 through 14 and 21 through 28.~~

~~(i) The tooth must be fractured or decayed to such an extent to prevent proper cuspal or incisal function.~~

~~(ii) The clinical crown should be destroyed by the above elements by one-half or more.~~

~~(iii) The client must be 16 years of age or older.~~

~~(D) **Cast frame partial dentures.** This appliance is the treatment of choice for replacement of multiple missing posterior and/or anterior permanent teeth in the same arch for persons 18 through 20 years of age. Indicate tooth numbers to be replaced and clasped. CC-88 must be used to show design.~~

~~(E) **Acrylic partial.** This appliance includes all necessary wrought wire clasps and is to be used to replace multiple missing anterior and/or posterior permanent teeth for persons 12 through 17 years of age where acrylic flipper is not appropriate.~~

~~(F) **Fixed cast non-precious metal or porcelain/metal bridges.** These bridges are limited to those persons 16 through 20 years of age where the bite relationship precludes the use of an acrylic or cast frame partial denture. Study models are required to substantiate need for fixed bridge(s).~~

~~(G) **Maryland bridge.** This type of bridge may be used for replacement of upper anterior teeth under age 18.0 years. The bite relationship must be such that an acrylic partial will not function properly. The abutment teeth must be decay free on the lingual surface, as well as interproximal surfaces at time of placement. Study models will be required to substantiate need for this appliance.~~

~~(H) **Additional prophylaxis.** OHCA recognizes that certain physical conditions require more than two annual prophylaxis. The following conditions could qualify a client for more than two prophylaxis per year and should be requested on form MS-MA-5 with proper documentation.~~

~~(i) dilantin hyperplasia~~

~~(ii) cerebral palsy~~

~~(iii) mental retardation~~

~~(iv) juvenile periodontitis~~

(b) Requests for prior authorization are filed on the currently approved ADA form. OHCA notifies the provider on the determination of prior authorization using OHCA Prior Authorization Request Decision form. Prior authorized services must be billed exactly as they appear on the prior authorization. Payment is not made for any services provided prior to receiving authorization except for the relief of pain.

(c) Prosthodontic services provided to patients who have become ineligible mid-treatment are covered if the client was eligible for Medicaid on the date the final impressions were made.

(d) Listed below are examples of services requiring prior authorization for individuals under 21 and eligible ICF/MR residents. Minimum required records to be submitted with each request are right and left mounted bitewing x-rays and periapical films of tooth/teeth involved or the edentulous areas if not visible in the bitewings. X-rays must be mounted so that they are viewed from the front of the patient. If required x-rays sent are copies, each film or print must be of good, readable quality and identified as to left and right sides. The film must clearly show the requested service area of interest. X-rays must be identified with client name, date, recipient ID number, provider name, and provider number. X-rays must be placed together in an envelope and stapled to the submission form.

(1) **Endodontics.** Pulpotomy may be performed for the relief of pain while waiting for the decision from the OHCA on request for endodontics.

(A) **Anterior root canals.** This procedure is for patients whom, by the provider's documentation, have a treatment plan requiring more than four anterior root canals and/or posterior endodontics. Payment is made for services provided in accordance with the following:

(i) Permanent teeth numbered 6, 7, 8, 9, 10, 11, 22, 23, 24, 25, 26 and 27 are eligible for therapy if there are not other missing teeth in the same arch requiring replacement, unless numbers 6. 11. 22, or 27 are abutments for prosthesis.

(ii) Accepted ADA filling must be used.

(iii) Pre and post operative periapical x-rays must be available for review.

(iv) Providers are responsible for any follow-up treatment required by a failed endodontically treated tooth within 24 months post completion.

(v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if crown to root ratio is poor.

(vi) An endodontic procedure may not be approved if the tooth requires a post and core in order to present adequate structure to retain a crown.

(B) **Posterior endodontics.** The guidelines for this procedure are as follows:

(i) The provider should document that the client has improved oral hygiene and flossing ability in this client's records.

(ii) Teeth that would require pre-fabricated post and cores to minimally retain a crown due to lack of natural tooth structure should not be treatment planned for root canal therapy.

(iii) Pre and post operative periapical x-rays must be available for review.

(iv) Providers are responsible for any follow-up treatment required by a failed endodontically treated tooth within 24 months post completion.

(v) A tooth will not be approved if it appears there is not adequate natural tooth structure remaining to establish good tooth/restorative margins or if there is a poor crown to root ratio or weakened root furcation area.

(vi) Only ADA accepted filling materials are acceptable under the OHCA policy.

(vii) Posterior endodontic procedure is limited to a maximum of five teeth. A request may not be approved if the tooth requires a post and core

in order to present adequate structure to retain a crown.

(viii) Endodontics will not be considered if:

(I) there are missing teeth in the same arch requiring replacement;

(II) an opposing tooth has super erupted;

(III) loss of tooth space is one third or greater;

(IV) opposing second molars are involved; or

(V) a tooth is failing due to previous inadequate root canal therapy.

(ix) Endodontically treated teeth must be restored to limited occlusal function and all contours must be replaced. These teeth will not be approved for a crown if it appears the apex is not adequately sealed.

(2) **Cast metal crowns or ceramic-based crowns.** This procedure is compensable for patients who are 16 years of age or older and adults residing in private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and who have been approved for ICF/MR level of care. Certain criteria and limitations apply.

(A) The following conditions must exist for approval of this procedure.

(i) The tooth must be fractured or decayed to such an extent to prevent proper cuspal or incisal function.

(ii) The clinical crown is destroyed by the above elements by one-half or more.

(iii) Endodontically treated teeth must have three or more surfaces restored or lost due to carious activity to be considered.

(B) The conditions listed in (A)(i) through (A)(iii) of this paragraph should be clearly visible on the submitted x-rays when a request is made for any type of crown.

(C) Routine build-up(s) for authorized crowns are included in the fee for the crown.

(D) A crown will not be approved if adequate tooth structure does not remain to establish cleansable margins, poor crown to root ratio, or the tooth appears to retain insufficient amounts of natural tooth structure. Cast down cores are not allowed.

(E) Preformed post(s) and core build-up(s) are not routinely provided with crowns for endodontically treated teeth.

(F) Ceramic-metal based crowns will be considered only for tooth numbers 4 through 13 and 21 through 28.

(G) Full cast metal crowns are treatment of choice for all posterior teeth.

(H) Provider is responsible for replacement or repair of cast crowns for 48 months post insertion.

(3) **Cast frame partial dentures.** This appliance is the treatment of choice for replacement of three or more missing permanent teeth in the same arch for individuals 16 through 20 years of age. Provider must indicate tooth number to be replaced and teeth to be clasped.

(4) **Acrylic partial.** This appliance is the treatment of choice for replacement of missing anterior permanent teeth or three or more missing teeth in the same arch for children 12 through 16 years of age and adults residing in private Intermediate Care Facilities for the Mentally Retarded (ICF/MR) and who have been approved for ICF/MR level of care. Provider must indicate tooth numbers to be replaced and teeth to be clasped. This appliance includes all necessary clasps and rests.

(5) **Fixed cast non-precious metal or porcelain/metal bridges.** Only patients 17 through 20 years of age where the bite relationship precludes the use of an acrylic or cast frame partial denture are considered. Study models with narrative are required to substantiate need for fixed bridge(s). Client must have excellent oral hygiene documented in the requesting provider's records.

(6) **Periodontal scaling and root planing.** This procedure is allowed on patients 12 to 20 and requires anesthesia and some soft tissue removal occurs. Tooth planing is designed for the removal of cementum and dentin that is rough, and/or permeated by calculus or contaminated with toxins and microorganism.

(7) **Additional prophylaxis.** The OHCA recognizes that certain physical conditions require more than two prophylaxes. The following conditions may qualify a patient for one additional prophylaxis per year:

(A) dilantin hyperplasia;

(B) cerebral palsy;

(C) mental retardation;

(D) juvenile periodontitis.

317:30-5-699. Restorations

~~Coverage for dental restorations is as follows:~~

~~(1) **Amalgam and Composite restorations.** Authority utilization parameters allow only one service to be provided per tooth per 12 months. This includes amalgams, crowns, and extractions.~~

(a) **Use of posterior composite resins.** Payment is not made for certain restorative services when posterior composite resins are used in restorations involving:

(1) replacement of any occlusal cusp;

(2) sub-gingival margins; and

(3) a restoration replacing more than 50 percent of the dentin.

(b) **Utilization parameters.** The Oklahoma Health Care Authority utilization parameters allow only one permanent restorative service to be provided per tooth per 12 months. Providers must document use of rubber dam isolation in daily treatment progress notes. The provider is responsible for follow-up or any required replacement of a failed restoration. Fees paid for the original restorative services may be recouped if any additional treatments are required on the same tooth by a different provider within 12 months due to defective restoration or recurrent decay.

(c) **Coverage for dental restorations.** Services for dental restorations are covered as follows:

(~~A~~1) If the mesial occlusal pit and the distal occlusal pit on an upper molar tooth are restored at the same appointment, this is a one surface restoration.

(~~B~~2) If any two separate surfaces on a posterior tooth are restored at the same appointment, it is a two surface restoration.

(~~C~~3) If any three separate surfaces on a posterior tooth are restored at the same appointment, it is a three surface restoration.

(4) If the mesial, distal, facial and/or lingual of an upper anterior tooth is restored at the same appointment, this is a four surface restoration.

(5) If any two separate surfaces on an anterior tooth are restored at the same appointment, it is a two surface restoration.

(6) If any three separate surfaces on an anterior tooth are restored at the same appointment, it is a three surface restoration.

(7) An incisal angle restoration is defined as one of the angles formed by the junction of the incisal and the mesial or distal surface of an anterior tooth. If any of these surfaces are restored at the same appointment, even if separate, it is considered as a single incisal angle restoration.

(~~D~~8) When four or more separate surfaces on a posterior tooth are restored at the same appointment it is a four surface restoration.

(~~E~~9) Wide embrasure cavity preparations do not become extra surfaces unless at least one half of cusp or surface is involved in the restoration. An MODFL restoration would have to include the mesial-occlusal-distal surfaces as well as either the buccal groove pit or buccal ~~gingival~~ surface or at least one half the surface of one of the buccal cusps. The same logic ~~would apply~~ applies for the lingual surface.

(~~2~~d) **Sedative restorations~~, emergency only, in office.~~** Sedative restorations~~, emergency only, in the office includes~~ include removal of decay, if present, and direct or indirect pulp cap, if needed. ~~This code is not to be used with any other treatment code~~ These two codes are the only codes that may be used for the same tooth~~,~~ on the same date of service. Permanent restoration of the tooth is allowed after 30 days unless the tooth becomes symptomatic and requires pain relieving treatment.

(~~3~~e) **Pulp caps.** Indirect and direct pulp cap must be ADA accepted materials, not a cavity liner. Utilization of ~~this code,~~ these codes ~~as well as direct pulp cap, will be~~ are verified on a post payment review.

317:30-5-700. Orthodontic services

(a) The Oklahoma State Medicaid Program limits orthodontic services to handicapping malocclusions determined to be severe enough to warrant medically necessary treatment. These orthodontic services include the following:

(1) a handicapping malocclusion, as measured on the Handicapping Labio-Lingual Deviation Index (HLD) with a minimum score of ~~26~~ 30; and

(2) any classification secondary to cleft palate or other maxillofacial deformity.

(b) Reimbursement for Orthodontic services is limited to:

(1) Orthodontists, or

(2) General or Pediatric dental practitioners who have completed at least 200 certified hours of continuing education in the field of orthodontics~~;~~ practice in an under served area, and successfully completed at least 25 comprehensive cases to include 10 or more extraction cases.

(A) As with all dental or orthodontia treatment performed and reimbursed by Medicaid, all pre and post orthodontic records must be available for review.

(B) Verification of the continuing education hours and the number of cases completed are reviewed by the OHCA Dental Unit every two years.

(c) The following limitations apply to orthodontic services:

(1) Cosmetic orthodontic services are not a covered benefit of the Oklahoma State Medicaid Program;

(2) All orthodontic procedures require prior authorization for payment;

(3) Prior authorization for orthodontic treatment is not a notification of the patient's eligibility and does not guarantee payment. Payment for authorized services ~~will depend~~ depends on the client's eligibility at the beginning of each treatment year;

(4) The client must be Medicaid-eligible and under ~~21~~ 18 years of age at the time the request for prior authorization for treatment is received by the OHCA and on the date that the last year of orthodontic service is to begin. Services cannot be added or approved after eligibility has expired:

(A) Clients receive a permanent Medical Identification Card;

(B) It is the orthodontist's responsibility to verify that the patient has current Medicaid eligibility and ~~that~~ the date of birth indicates the client is under age ~~21~~ 18.~~ If no card is available, case status can be verified by utilizing the REVS system.~~

(d) Orthodontic services are an elective procedure. The orthodontist must interview the prospective patient as to his/her understanding of and willingness to cooperate fully in a lengthy treatment program.

(e) The interview information is unavailable to OHCA except through the provider's recommendation of treatment. The interview process for OHCA clients is equivalent to that of private pay patients.

(f) Providers are not obligated to accept a client when it appears that the client will not cooperate in the orthodontic hygiene treatment program or is not willing to keep eligibility for Medicaid current.

317:30-5-700.1. Orthodontic prior authorization

(a) ~~The necessary documentation for seeking orthodontic services for a child is listed below.~~ The following records and documentation, plainly labeled with the patient's full name, ~~case~~ recipient identification number (RID), and the orthodontist's name~~,~~ are required for prior authorization of orthodontic services for a child and must be submitted to the ~~Medical~~ Dental Authorization Unit of the OHCA for review.

(1) Completed ~~DHS form MS-MA-5, Notification of Needed Medical Services, Section I and Section III~~ currently approved ADA dental claim form;

(2) Completed and scored Handicapping Labio-Lingual Deviations Index with Diagnosis of Angle's classification;

(3) Detailed description of any oromaxillofacial anomaly;

(4) Estimated length of treatment;

(5) ~~If multi-stage treatment is indicated, delineate each stage, as well as the service to be provided and length of treatment required for each stage~~ Delineation of each stage, the service to be provided and length of treatment required for each stage if multi-stage treatment is indicated;

(6) Properly occluded and anatomically trimmed study models or 3-D model images;

(7) ~~Panoramic films.~~ Cephalometric x-rays with tracing, panoramic film, and facial photographs ~~are not compensable and are not required to be submitted~~ with a request for prior authorization of comprehensive orthodontic treatment;

(8) An oral surgeon's written opinion that orthognathic surgery or bone grafting is indicated; and

(9) Additional pertinent information as determined necessary by the orthodontist or as requested by the OHCA's Orthodontic Consultant.

(b) Models, ~~radiographs~~ x-rays, and all required documentation must be submitted in one package. OHCA ~~shall not be~~ is not responsible for lost or damaged materials.

(c) All records and documentation submitted in a request for prior authorization for orthodontic treatment ~~shall be~~ are reviewed by the OHCA Orthodontic Consultant for compensability and length of treatment.

(d) ~~The Oklahoma Health Care Authority recognizes that some~~ Some children ~~who do~~ not ~~receive a score~~ receiving a minimum score of ~~26~~ 30 on the Handicapping Labio-Lingual Deviation Index (HLD) may have other conditions ~~which should be scored~~ to be considered. In the ~~case~~ event ~~that~~ an orthodontist believes ~~that~~ there are other medical, social, or emotional conditions ~~which may impact~~ impacting the general health of the child, ~~such~~ he/she refers to the conditions ~~are~~ listed on the EPSDT exception section found on the HLD. The following guidelines and restrictions apply to other conditions:

(1) Other ~~"~~medical, social, or emotional conditions~~"~~ are limited to those conditions that affect the medical, social or emotional function of the child.

(2) Other medical, social, or emotional conditions ~~will not be~~ are not scored if the sole condition sought to be improved is the cosmetic appearance of the child.

(3) Such ~~"~~other medical, social, or emotional conditions~~"~~ must be demonstrated by objective evidence such as supported documentation outside the child's immediate family (i.e., a child's teacher, primary care physician, mental health provider, school counselor).

(4) ~~Such objective~~ Objective evidence must be submitted with the HLD.

(5) When such ~~"~~other medical, social, or emotional conditions~~"~~ are reflected on the HLD, the OHCA Orthodontic Consultant ~~shall~~ must review the data and use his or her professional judgment to score the value of the conditions.

(6) The OHCA Orthodontic Consultant may consult with and utilize the opinion of the orthodontist who completes the form.

(e) If it is determined that the malocclusion is not severe enough to warrant medically necessary orthodontic services or the patient's age precludes approval, a computer generated notice is issued to the provider and recipient with notice of the denial, the reason for the denial, and appeal rights (see OAC 317:2-1 for grievance procedures and process).

(f) ~~If orthodontic treatment is approved, a computer generated notice is issued authorizing the first year of treatment. Authorization for the first year will include the banding and wires and the first year of adjustments. Subsequent adjustments will be authorized in one year intervals. All approved treatment will be included on the original prior authorization and will include the total payment for that treatment year. Payment for the first year of treatment includes the banding, wires, and adjustments as well as all ancillary services, including the removal of appliances, and the construction and placing of retainers. The authorization number on the form must be included on all claims submitted for processing. The provider will file one claim at the beginning of each treatment year for the entire year.~~ Orthodontic treatment and payment for the services are approved within the scope of Medicaid. If orthodontic treatment is approved, a computer generated notice is issued authorizing the first year of treatment.

(1) Approval of orthodontic treatment is given in accordance with the following:

(A) Authorization for the first year includes the banding and wires and the first year of adjustments.

(B) Subsequent adjustments will be authorized in one year intervals.

(C) All approved treatment is included on the original prior authorization and will include the total payment for that treatment year.

(2) Claim and payment are made as follows:

(A) Payment for the first year of treatment includes the banding, wires, and adjustments as well as all ancillary services, including the removal of appliances, and the construction and placing of retainers. The authorization number must be included on all claims submitted for processing.

(B) The provider files one claim at the beginning of each treatment year for the entire year.

(C) Payment is not made for comprehensive treatment beyond 36 months.

(g) Relative Value Units (RVU's) have been developed by OHCA for the first year's treatment and each subsequent year's treatment. The allowable charge ~~will be~~ is computed by multiplying the RVU by the current conversion factor.

(h) If the client moves from the geographic area or shows a need to change their provider, then the provider who received

the yearly payment is financially responsible until completion of that client's orthodontic treatment for the current year.

(i) If the provider who received yearly payment does not agree to be financially responsible, then the Oklahoma Health Care Authority will recoup funds paid for the client's orthodontic treatment.

(j) All orthodontic services are subject to post-utilization review. This review may include a request by the OHCA to submit medical documentation necessary to complete the review. After review is completed, these materials ~~will be~~ are returned to the orthodontist.

(k) Study models must be diagnostic and meet the following requirements: ~~. This means that they~~

(1) Study models must be properly poured and adequately trimmed ~~with neither~~ without large voids ~~nor~~ or positive bubbles present.

(2) Centric occlusion must be clearly indicated by pencil lines on the study models, making it possible to occlude the teeth on the models in centric occlusion.

(3) 3-D model images are encouraged.

~~(1) If study~~ (4) Study models ~~are~~ not in compliance with the above described diagnostic guidelines ~~as described, they~~ are not accepted. ~~and the~~ The provider is asked to send new models that ~~do~~ meet these requirements. If the provider does not respond, the request for treatment is denied.

(~~2~~5) All measurements are made or judged on the basis of greater than or more than the minimal criteria. Measurement, counting, recording, or consideration is performed only on teeth that have erupted and may be seen on the study models.

317:30-5-701. Surface identification

Surfaces requiring dental treatment must be indicated using standard Latin abbreviations. ~~Please use capital letters on claims.~~ The following capital letters are used on claims:

(1) M - Mesial
(2) D - Distal
(3) O - Occlusal
(4) L - Lingual
(5) F - ~~Facial/Buccal~~ Facial
(6) I - Incisal
(7) B - Buccal.

317:30-5-703. Tooth numbering system

(a) For adult teeth, the universal tooth numbering system (1 through 32) is used. For primary teeth, tooth letters A through T are used.

(b) No other tooth letter or number system ~~will be~~ is accepted. ~~Failure to use this system will result in the claim being rejected and could cause faulty history which could prevent future claims from being paid. (Example: Using tooth number 25d instead of number P for an extraction. The computer would not allow a service for permanent tooth number 25 as history would indicate that tooth has already been extracted and is ineligible for other services).~~ All procedures performed on a specific tooth require the appropriate tooth number.

~~(c) Listed below are the identifying numbers for supernumerary teeth.~~

~~(1) #46 Mesiodens (Between #8 and #9)~~
~~(2) #47 Second Mesiodens (Between #8 and #9)~~
~~(3) #48 Supernumerary tooth between or alongside #28~~
~~(4) #49 Supernumerary tooth between or Alongside #29~~
~~(5) #50 Supernumerary tooth between or alongside #20~~
~~(6) #51 Supernumerary tooth between or alongside #21~~
~~(7) #52 Supernumerary tooth between #7 and #8~~
~~(8) #53 Supernumerary tooth between #9 and #10~~
~~(9) #54 Upper right 4th molar (permanent)~~
~~(10) #55 Upper left 4th molar (permanent)~~
~~(11) #56 Lower right 4th molar (permanent)~~
~~(12) #57 Lower left 4th molar (permanent)~~
~~(13) #58 Supernumerary between or alongside #4 and #5~~
~~(14) #59 Supernumerary between or alongside #12 and 13~~
~~(15) #60 Supernumerary not otherwise identified (identify location on claim)~~

(c) Supernumerary teeth are identified as follows:

(1) **Permanent dentition.** Supernumerary teeth are identified by the numbers 51 through 82, beginning with the area of the upper right third molar, following around the upper arch and continuing on the lower arch to the area of the lower right third molar. For example, supernumerary number 51 is adjacent to the upper right molar number 1, and supernumerary number 82 is adjacent to the lower right third molar number 32.

(2) **Primary dentition.** Supernumerary teeth are identified by the placement of the letter "S" following the letter identifying the adjacent primary tooth. For example, supernumerary "AS" is adjacent to "A" and supernumerary "TS" is adjacent to "T".

317:30-5-704. Billing instructions

(a) **HCPCS Codes.** The Oklahoma Health Care Authority utilizes the Medicare Level II HCPCS Codes. All claim submissions must be in compliance with this coding system.

(b) **Prior authorization.** ~~Claim submissions for services which require a prior authorization, must include the prior authorization number.~~ Where applicable, the appropriate surface and tooth number must be included on the claim.

(c) **X-rays.** X-rays submitted with the claim form cannot be returned. Those submitted with a request for prior authorization will be returned. All x-rays ~~should~~ must be dated, mounted and have ~~client's~~ patient's name, ~~case number~~ recipient identification number (RID), provider name and provider number.

~~(IV) *D5721; Rebase lower partial denture; Category: C.~~

317:30-5-705. Billing

Billing for dental services ~~will be~~ is done on the claim form developed by the American Dental Association. Paper claims must be submitted on the currently approved version of the

ADA Claims forms. Electronic submission must be made on the HIPPA compliant Form 837D.

[OAR Docket #06-1018; filed 5-22-06]

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

[OAR Docket #06-999]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 3. Hospitals
317:30-5-47. [AMENDED]
(Reference APA WF # 05-21)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 447.250; 42 CFR 447.298
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Subchapter 5. Individual Providers and Specialties
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317:30-5-47. [AMENDED]
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23 Ok Reg 807
Docket number:
06-293
(Reference APA WF # 05-21)
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Agency hospital rules are being revised to reinstate language related to pre-admission procedures that were inadvertently deleted from rules. In October of this year, the agency adopted hospital reimbursement rules that used the Diagnosis Related Groups, or DRGs. When agency staff re-wrote those rules, language was inadvertently omitted that is now being reinstated. The language that is being added back into the rules includes reimbursement for pre-admission diagnostic testing performed within 72 hours of admission, organ transplants, Disproportionate Hospital adjustments and graduate medical education activities. Revisions are needed to reinstate language that was unintentionally removed from hospital rules by a previous emergency rule action. Other rules are incorporated due to superseding emergency rules previously approved by the Governor on October 3, 2005 in APA WF # 05-15. Those rules implemented House Bill 1088 of the 1st Session of the 50th Legislature, which provided funding to increase provider reimbursement rates.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 3. HOSPITALS

317:30-5-47. Reimbursement for inpatient hospital services

~~Reimbursement for inpatient hospital services is made based on a prospective per diem level of care payment system. Reimbursement for inpatient care includes services provided to the patient within 72 hours of admission. This includes diagnostic testing, emergency room, observation room, and outpatient surgery charges. The per diem includes all non-physician services furnished either directly or under arrangements. When a patient is taken to another facility with a Medicaid contract for treatment not available at the admitting facility, reimbursement to the treating facility by the admitting facility will be limited to the Medicaid fee schedule. This does not include reimbursement for services in Residential Psychiatric Treatment Facilities.~~

~~(1) **Components.** There are two distinct payment components under this system. Total per diem reimbursement under the reimbursement system will equal the sum of:~~

~~(A) Level of care per diem; plus~~
~~(B) Fixed capital per diem.~~

~~(2) **Level of care per diem rates.** The level of care per diem rates are payments for operating costs and movable capital costs. Hospitals with actual costs above the statewide median level of care will be limited to reimbursement of the statewide median level of care rate. The median was calculated by level of care using FY 1988 base year operating and moveable capital costs trended forward to the beginning of the third quarter FY 1991. Beginning July 1, 1993, when a hospital's actual costs are less than the statewide median level of care, 25 percent of the difference between the statewide median level of care rate and the hospital's specific level of care cost will be added to each level of care rate.~~

~~(A) **Levels of care.** There are eight levels of care:~~

~~(i) Burn Care (Level 1). Presence of burn unit revenue code charges (Revenue code 207);~~

~~(ii) Neonatal intensive Care Unit (NICU) (Level 2). Presence of neonatal intensive care unit~~

~~revenue code charges on NICU claims from Level III providers (Revenue code 174);~~

~~(iii) Maternity care (Level 3). Diagnosis codes;~~

~~(iv) Surgical care (Level 4). Presence of surgical revenue code charges (Revenue codes 360 - 369 including C-Sections). (See (B)(ii) of this paragraph for exception to payment of minor surgical procedures);~~

~~(v) Rehabilitation care (Level 5). Range of primary and secondary diagnosis codes (Diagnosis codes V57xx - V5799);~~

~~(vi) Psychiatric care (Level 6). Range of primary diagnosis codes (Diagnosis codes 290 - 316);~~

~~(vii) Intensive Care Unit/Coronary Care Unit (ICU/CCU) (Level 7). Presence of Intensive Care Unit/Coronary Care Unit revenue code charges (Revenue codes 200-206, 208-219);~~

~~(viii) Routine care (Level 8). All remaining days (Revenue codes 101, 110 - 179, 186 - 189).~~

~~(B) **Claims.** Claims will be classified into each of the eight levels of care based on the hierarchy shown in (A)(i) through (A)(viii) of this paragraph, with claims potentially classifying into Level 1 first, then Level 2, and so forth. Payment of claims classified into Levels 1 - 6 and Level 8 is made at a single level of care rate. For example, if a claim is classified into Level 3, the Maternity level of care, then all covered days submitted on that claim will be made at the Level 3 per diem rate. There are two exceptions to this rule:~~

~~(i) Payment of claims classified into Level 7 may be made at two level of care rates. This would occur if a claim is submitted for payment with both ICU/CCU revenue code charges and routine revenue code charges; payment is split between Levels 7 and 8. For example, if a claim is submitted with three covered ICU/CCU days and seven covered routine days, the claim shall be paid three days at the ICU/CCU per diem rate and seven days at the routine per diem rate. However, if a claim is submitted with ten covered ICU/CCU days and no routine days, ten days will be made at the ICU/CCU level of care rate. Claims for a single stay shall not be split and submitted as two claims solely for the purpose of obtaining two different level of care payment rates (except when patients receiving psychiatric care in acute care hospitals are transferred to medical units because their non-psychiatric medical needs become the primary cause of hospitalization). There are two restrictions on these levels of care:~~

~~(I) Only Level III neonatal units will be paid the NICU level of care per diem rate. For rate setting purposes a hospital is considered eligible to receive the level III NICU rate if it meets the criteria used by the Health Planning Commission (now part of the Oklahoma Department of Health) in its 1988 Hospital Utilization and Plan Survey.~~

~~(II) All claims from free-standing inpatient psychiatric hospitals will be paid at the Level 6, Psychiatric, level of care rate. (Psychiatric claims from acute care hospitals will also be paid at the Level 6 rate).~~

~~(ii) Certain surgical procedures are paid at a lower level of care than the surgery rate. These procedures do not require the same resources as most procedures paid at a surgical rate and are classified as minor surgeries and paid at a routine level of care. When a minor surgery is involved, but a level of care other than routine is indicated, payment will be made at the appropriate level of care. Minor procedures include:~~

~~(I) 03.31 Spinal Tap~~

~~(II) 03.90 Insertion of catheter into spinal canal for infusion of palliative or therapeutic substance~~

~~(III) 03.91 Injection of anesthesia into spinal canal~~

~~(IV) 03.92 Injection of other agent into spinal canal~~

~~(V) 04.80 Injection of peripheral nerve, NOS~~

~~(VI) 04.81 Injection of anesthetic into peripheral nerve for analgesia~~

~~(VII) 04.89 Injection of other agent (except neurolytic)~~

~~(VIII) 06.11 Closed (percutaneous) (needle) biopsy of thyroid gland~~

~~(IX) 08.81 Linear repair of laceration of eyelid~~

~~(X) 14.21 Destruction of chorioretinal lesion by diathermy~~

~~(XI) 14.22 Destruction of chorioretinal lesion by cryotherapy~~

~~(XII) 14.23 Destruction of chorioretinal lesion by xenon arc photocoagulation~~

~~(XIII) 14.24 Destruction of chorioretinal lesion by laser photocoagulation~~

~~(XIV) 14.25 Destruction of chorioretinal lesion, unspecified~~

~~(XV) 14.26 Destruction of chorioretinal lesion by radiation therapy~~

~~(XVI) 14.29 Destruction of chorioretinal lesion, NOS~~

~~(XVII) 16.21 Ophthalmoscopy~~

~~(XVIII) 18.02 Incision of external auditory canal~~

~~(XIX) 18.11 Otoscopy~~

~~(XX) 18.12 Biopsy of external ear~~

~~(XXI) 18.19 Other diagnostic procedure on external ear~~

~~(XXII) 18.4 Suture of laceration of external ear~~

~~(XXIII) 20.1 Removal of tympanostomy tube~~
~~(XXIV) 20.31 Electrocochiliography~~
~~(XXV) 21.00 Control of epistaxis NOS~~
~~(XXVI) 21.01 Control of epistaxis by anterior nasal packing~~
~~(XXVII) 21.02 Control of epistaxis by posterior and anterior nasal packing~~
~~(XXVIII) 21.03 Control of epistaxis by cauterization and packing~~
~~(XXIX) 21.22 Biopsy of nose~~
~~(XXX) 21.29 Other diagnostic procedure on nose~~
~~(XXXI) 21.71 Closed reduction of nasal fracture~~
~~(XXXII) 21.81 Suture of laceration of nose~~
~~(XXXIII) 22.11 Closed (endoscopic) (needle) biopsy of nasal sinus~~
~~(XXXIV) 22.19 Other diagnostic procedure on nasal sinus~~
~~(XXXV) 23.2 Restoration of tooth by filling~~
~~(XXXVI) 23.3 Restoration of tooth by inlay~~
~~(XXXVII) 23.41 Dental restoration by application of crown~~
~~(XXXVIII) 23.42 Dental restoration by fixed bridge~~
~~(XXXIX) 23.43 Dental restoration by removable bridge~~
~~(XL) 23.49 Dental restoration, other~~
~~(XLI) 24.11 Biopsy of the gum~~
~~(XLII) 24.12 Biopsy of the alveolus~~
~~(XLIII) 24.19 Other diagnostic procedures on teeth, gums, alveoli~~
~~(XLIV) 24.7 Application of orthodontic appliance~~
~~(XLV) 24.8 Other orthodontic operation~~
~~(XLVI) 25.01 Closed (needle) biopsy of tongue~~
~~(XLVII) 25.09 Other diagnostic procedure on tongue~~
~~(XLVIII) 25.51 Suture of laceration of tongue~~
~~(IL) 25.91 Lingual frenotomy~~
~~(L) 26.11 Closed (needle) biopsy of salivary gland or duct~~
~~(LI) 26.19 Other diagnostic procedures on salivary glands and ducts~~
~~(LII) 26.91 Probing of salivary duct~~
~~(LIII) 27.21 Biopsy of bony palate~~
~~(LIV) 27.22 Biopsy of uvula and soft palate~~
~~(LV) 27.23 Biopsy of lip~~
~~(LVI) 27.24 Biopsy of mouth, unspecified structure~~
~~(LVII) 27.29 Other diagnostic procedures on oral cavity~~
~~(LVIII) 27.51 Suture of laceration of lip~~
~~(LIX) 27.52 Suture of laceration of other part of mouth~~
~~(LX) 27.91 Labial frenotomy~~
~~(LXI) 31.41 Tracheoscopy through artificial stoma~~
~~(LXII) 31.42 Laryngoscopy and other tracheoscopy~~
~~(LXIII) 31.43 Closed (endoscopic) biopsy of larynx~~
~~(LXIV) 31.44 Closed (endoscopic) biopsy of trachea~~
~~(LXV) 33.21 Bronchoscopy through artificial stoma~~
~~(LXVI) 33.22 Fiberoptic bronchoscopy~~
~~(LXVII) 33.23 Other bronchoscopy~~
~~(LXVIII) 33.24 Closed (endoscopic) biopsy of bronchus~~
~~(LXIX) 33.91 Bronchial dilation~~
~~(LXX) 34.04 Insertion of intercostal catheter for drainage~~
~~(LXXI) 34.25 Closed (percutaneous) (needle) biopsy of ediastinum~~
~~(LXXII) 34.91 Thoracentesis~~
~~(LXXIII) 34.92 Injection into thoracic cavity~~
~~(LXXIV) 37.70-37.73 Insertion of leads: NOS, atrium, ventricle, atrium and ventricle~~
~~(LXXV) 37.74-37.77 Replacement/revision of leads~~
~~(LXXVI) 37.78 Insertion of temporary pacemaker~~
~~(LXXVII) 38.91 Arterial catheterization~~
~~(LXXVIII) 38.92 Umbilical vein catheterization~~
~~(LXXIX) 38.93 Venous catheterization, NOS~~
~~(LXXX) 38.94 Venous cutdown~~
~~(LXXXI) 38.95 Venous catheterization for renal dialysis~~
~~(LXXXII) 38.98 Other puncture of an artery~~
~~(LXXXIII) 38.99 Other puncture of vein~~
~~(LXXXIV) 39.95 Hemodialysis~~
~~(LXXXV) 42.22 Esophagoscopy through artificial stoma~~
~~(LXXXVI) 42.23 Other esophagoscopy~~
~~(LXXXVII) 42.24 Closed (endoscopic) biopsy of esophagus~~
~~(LXXXVIII) 42.92 Dilation of esophagus~~
~~(LXXXIX) 44.12 Gastroscopy through artificial stoma~~
~~(XC) 44.13 Other gastroscopy~~
~~(XCI) 44.14 Closed (endoscopic) biopsy of stomach~~
~~(XCII) 44.22 Endoscopic dilation of pylorus~~
~~(XCIII) 45.12 Endoscopy of large intestine through artificial stoma~~
~~(XCIV) 45.13 EGD~~
~~(XCV) 45.14 Closed (endoscopic) biopsy of small intestine~~
~~(XCVI) 45.16 EGD with biopsy~~
~~(XCVII) 45.22 Endoscopy of large intestine through artificial stoma~~
~~(XCVIII) 45.23 Colonoscopy~~

~~(IC) 45.24 Flexible sigmoidoscopy~~
~~(C) 45.25 Colonoscopy with biopsy~~
~~(CI) 45.42 Endoscopic polypectomy of large intestine~~
~~(CII) 48.22 Proctosigmoidoscopy through artificial stoma~~
~~(CIII) 48.23 Rigid proctosigmoidoscopy~~
~~(CIV) 48.24 Closed (endoscopic) biopsy of rectum~~
~~(CV) 54.91 Percutaneous abdominal paracentesis~~
~~(CVI) 54.98 Peritoneal dialysis~~
~~(CVII) 56.31 Ureteroscopy~~
~~(CVIII) 56.32 Closed percutaneous biopsy of ureter~~
~~(CIX) 56.33 Ureteroscopy with biopsy (endoscopic)~~
~~(CX) 57.31 Cystoscopy through artificial stoma~~
~~(CXI) 57.32 Other cystoscopy~~
~~(CXII) 58.22 Other urethroscopy~~
~~(CXIII) 58.31 Urethroscopy with biopsy~~
~~(CXIV) 58.6 Dilation of urethra~~
~~(CXV) 60.11 Closed (percutaneous) biopsy of prostate~~
~~(CXVI) 62.11 Closed (percutaneous) biopsy of testis~~
~~(CXVII) 70.0 Culdocentesis~~
~~(CXVIII) 70.12 Culdotomy~~
~~(CXIX) 70.21 Vaginoscopy~~
~~(CXX) 71.3 Other local excision or destruction of vulva and perineum~~
~~(CXXI) 79.00-79.09 Closed reduction of fracture (various sites)~~
~~(CXXII) 79.70-79.79 Closed reduction of dislocation (various sites)~~
~~(CXXIII) 81.91 Arthrocentesis~~
~~(CXXIV) 81.92 Injection of therapeutic substance into joint or ligament~~
~~(CXXV) 83.21 Biopsy of soft tissue~~
~~(CXXVI) 84.41 Fitting of prosthesis, upper arm and shoulder~~
~~(CXXVII) 84.42 Fitting of prosthesis, lower arm and hand~~
~~(CXXVIII) 84.43 Fitting of prosthesis, arm, NOS~~
~~(CXXIX) 84.45-84.47 Fitting of prosthesis, above knee, below knee, leg, NOS~~
~~(CXXX) 85.11 Closed (percutaneous) (needle) biopsy of breast~~
~~(CXXXI) 85.19 Other diagnostic procedure on breast~~
~~(CXXXII) 85.91 Aspiration of breast~~
~~(CXXXIII) 85.92 Injection of therapeutic agent into breast~~
~~(CXXXIV) 86.01 Aspiration of skin and subcutaneous tissue~~
~~(CXXXV) 86.03 Incision of pilonidal sinus or cyst~~
~~(CXXXVI) 86.04 Other incision with drainage of skin and subcutaneous tissue~~
~~(CXXXVII) 86.07 Insertion of VAD (infusaport)~~
~~(CXXXVIII) 86.09 Other incision of skin and subcutaneous tissue~~
~~(CXXXIX) 86.11 Biopsy of skin and subcutaneous tissue~~
~~(CXL) 86.19 Other diagnostic procedure on skin and subcutaneous tissue~~
~~(CXLI) 86.26 Ligation of dermal appendage~~
~~(CXLII) 86.28 Non-excisional debridement of wound~~
~~(CXLIII) 86.59 Suture of skin and subcutaneous tissue, other sites~~
~~(CXLIV) 87.01-99.99 Miscellaneous diagnostic and non-surgical procedures~~

~~(iii) ICU/CCU (level 7) and routine (level 8) care are peer grouped based on hospital teaching and nonteaching status. These two levels of care are peer grouped because a statistically significant difference in cost was found between teaching and nonteaching hospitals in these categories. Therefore, for payment purposes, hospitals that either belong to the Council on Teaching Hospitals or have a medical school affiliation qualify for the teaching peer grouped rate for Levels 7 and 8. All other hospitals shall receive the nonteaching rate for Levels 7 and 8.~~

~~(C) **Adjustments.** Level of care per diem rates will be reviewed periodically and adjusted as necessary through a public process.~~

~~(3) **Fixed capital per diem.** The second rate component is the per diem capital component. Fixed capital per diem is calculated separately for acute care inpatient hospitals and freestanding inpatient psychiatric hospitals using different methodologies.~~

~~(A) **Fixed capital per diem methodology for freestanding psychiatric hospitals.** Inpatient psychiatric hospitals fixed rate capital cost will be reimbursed using the average fixed rate capital cost of all Medicaid enrolled freestanding psychiatric inpatient hospitals from calendar year 1991 cost reports.~~

~~(B) **Fixed capital per diem methodology for acute care inpatient hospitals.** Inpatient hospital fixed capital per diem cost will be reimbursed using a peer group fixed capital weighted payment method.~~

~~(i) There are five peer groups based on level of care of the services offered:~~

~~(I) Teaching hospitals with burn and NICU units.~~

~~(II) Teaching hospitals with NICU units, but no burn unit.~~

~~(III) Teaching hospitals without NICU or burn unit.~~

~~(IV) Non-teaching hospitals with NICU units, but no burn unit.~~

~~(V) Non-teaching hospitals with no burn or NICU unit.~~

~~(ii) A value factor for each level of care within a peer group is determined by dividing each level of care per diem rate (peer group statewide level of care rate per diem) by the average of all the level of care rates within a peer group.~~

~~(iii) The peer group fixed capital per diem weighted payment component for each level of care is then determined by multiplying the statewide median fixed capital of all inpatient hospitals by the level of care value factor derived in (ii) of this subparagraph.~~

~~(C) **Adjustments.** The statewide fixed capital per diem average of all freestanding psychiatric hospitals and the statewide fixed capital per diem median of all inpatient hospitals will be reviewed periodically and adjusted as necessary through a public process.~~

~~(4) **Disproportionate share hospitals (DSH).**~~

~~(A) **Eligibility.** A hospital shall be deemed a disproportionate share hospital, as defined by Section 1923 of the federal Social Security Act, if the hospital's Medicaid inpatient utilization rate is at least one standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state or if the hospital's low-income utilization rate exceeds 25%.~~

~~(i) Eligibility for disproportionate share hospital payments will be determined annually by the OHCA before the beginning of each federal fiscal year based on cost and revenue survey data completed by the hospitals. The survey must be received by OHCA each year by April 30. The information used to complete the survey must be extracted from the hospital's financial records and fiscal year cost report ending in the most recently completed calendar year, for entities that meet the Medicare Provider designation (refer to Medicare Program Memorandum No. A-96-7 for requirements). A hospital may not include costs or revenues on the survey which are attributable to services rendered in a separately licensed/certified entity. Hospitals found to be ineligible for disproportionate share status upon audit shall be required to reimburse the Authority for any disproportionate share payment adjustments paid for the period of ineligibility.~~

~~(ii) Beyond meeting either of the tests found in (i) of this subparagraph, there are three additional requirements which are:~~

~~(I) Any hospital offering non-emergency obstetrical services must have at least two obstetricians with staff privileges who have agreed to provide services to Medicaid beneficiaries. This requirement does not apply to children's hospitals.~~

~~(II) In the case of an urban hospital, a hospital located in an MSA, an "obstetrician" is defined as any board-certified obstetrician with staff privileges who performs non-emergency obstetrical services at the hospital. In the case of a rural hospital, an "obstetrician" is defined to include any physician with staff privileges who performs non-emergency obstetrical services at the hospital.~~

~~(III) A hospital must have a Medicaid inpatient utilization rate of at least one percent.~~

~~(B) **Payment adjustment.**~~

~~(i) Beginning federal fiscal year 1993 and each year thereafter, DSH payment adjustments will be capped by the federal government. Financial participation from the federal government will not be allowed for expenditures exceeding the capped amount. Eligible DSH hospitals will be assigned to one of the three following categories:~~

~~(I) public-private acute care teaching hospital which has 150 or more full-time equivalent residents enrolled in approved teaching programs (using the most recently completed annual cost report) and is licensed in the state of Oklahoma. Public-private hospital is a former state operated hospital that has entered into a joint operating agreement with a private hospital system;~~

~~(II) other state hospitals; or~~

~~(III) private hospitals and all out-of-state hospitals.~~

~~(ii) Payment adjustments will be made on a quarterly basis for federal fiscal year 1994 and thereafter using the following formula that determines the hospital's annual allocation:~~

~~(I) Step 1. The Medicaid revenue and imputed revenue for charity are totaled for each hospital qualifying for disproportionate share adjustments.~~

~~(II) Step 2. A weight is assigned to each qualifying hospital by dividing each hospital's revenue total (Medicaid and charity) by the revenue total of the public-private acute care teaching hospital, which has the assigned weight of 1.0.~~

~~(III) Step 3. A weighted value is then determined for each hospital by multiplying the hospital's assigned weight by the hospital's total Medicaid and charity revenue.~~

~~(IV) Step 4. The weighted values of all hospitals qualifying for disproportionate share adjustments are totaled.~~

~~(V) Step 5. The percentage of the public-private acute care teaching hospital's weighted value is determined in relation to the weighted values of all qualifying disproportionate share hospitals.~~

~~(VI) Step 6. The weighted values of all state hospitals (except public-private acute care teaching hospital) are totaled.~~

~~(VII) Step 7. The weighted values of all private and out of state hospitals qualifying for disproportionate share adjustments are totaled.~~

~~(VIII) Step 8. The percentage of the total weighted values of the hospitals included in Step 6 (State hospitals except public private acute care teaching hospital) is calculated in relation to the total weighted values (sum of Step 6 and 7) of all remaining hospitals qualifying for disproportionate share adjustment.~~

~~(IX) Step 9. The percentage of weighted values of the hospitals included in Step 7 (private hospitals and all out-of state hospitals) is calculated in relation to the total weighted values (sum of Steps 6 and 7) of all remaining hospitals qualifying for disproportionate share adjustment.~~

~~(X) Step 10. The weighted percentages for the three hospital groups are next applied to the capped disproportionate share amount allowed by HCFA for the federal fiscal year. The amount of disproportionate share to be paid to the public private acute care teaching hospital is determined by multiplying the state disproportionate share allotment by the weighted percentage of the public-private acute care teaching hospital. Beginning FFY 96, the weighted percentage amount to be paid will not exceed 82.82%. Payment of disproportionate share funds to public/private hospitals will be made to the public entity that is organizationally responsible for indigent care. The weighted percentage amount is then subtracted from the state disproportionate share allotment. Once the public private acute care teaching hospital's share of the state disproportionate share allotment has been subtracted, the state hospitals' weighted percentage is applied to the remainder. Beginning FFY 96, the State hospital's weighted percentage (from VIII of this subunit) will not be less than 75.3%. The balance of the disproportionate share allotment is distributed to private hospitals and all out-of state hospitals. Distribution of funds within each group will be made according to the relationship of each hospital's weighted value to the total weighted value of the group.~~

~~(iii) Payment adjustments to individual hospitals will be limited to 100 percent of the hospital's costs of providing services (inpatient and outpatient) to Medicaid recipients and the uninsured, net of payments received from Medicaid (other than DSH) and uninsured patients.~~

~~(5) **Critical Access Hospitals.** Critical Access Hospitals (CAHs) are rural public or non-profit hospitals which provide 24-hour emergency care services, are limited to 15 inpatient beds (can have 10 additional swing beds) and inpatient stays are limited to 96 hours. A payment adjustment will be made to hospitals certified by the Oklahoma State Department of Health as Critical Access Hospitals.~~

~~(6) **Indirect medical education (IME) adjustment.**~~

~~(A) Effective February 11, 1999, acute care hospitals that qualify as major teaching hospitals will receive an indirect medical education (IME) payment adjustment, which covers the increased operating, or patient care, costs that are associated with approved intern and resident programs.~~

~~(B) In order to qualify as a major teaching hospital and be deemed eligible for an IME adjustment, the hospital or hospitals of common ownership must:~~

~~(i) belong to the Council on Teaching Hospitals or have a medical school affiliation; and~~

~~(ii) be licensed by the State of Oklahoma; and~~

~~(iii) have 150 or more full-time equivalent (FTE) residents enrolled in approved teaching programs.~~

~~(C) Eligibility for an IME adjustment will be determined by the OHCA, using the provider's most recently received annual cost report or the application [see paragraph (7) of this subsection] for the quarterly Direct Medical Education Supplemental payment adjustment.~~

~~(D) An annual fixed IME payment pool will be established based on the State matching funds made available by transfers from other State agencies. The pool of funds will be distributed annually each State fiscal year. The total pool of monies made available by funds transferred by any State agency will be limited to $10,038,714, the 1999 base year amount. The base year payment amount will be updated annually each July 1 using the first quarter publication of the DRI PPS-type Hospital market basket forecast for the midpoint of the upcoming fiscal year, if funds are available.~~

~~(E) The payments will be distributed equally. For hospitals that have public-private ownership, or have entered into a joint operating agreement, payment will be made to the public entity that is organizationally responsible for the public teaching mission.~~

~~(F) If payment causes total payments to exceed Medicare upper limits as required by 42 CFR 447.272, the payment will be reduced to not exceed the Medicare upper limit.~~

~~(7) **Direct medical education supplemental incentive payment adjustment.**~~

~~(A) Effective July 1, 1999, in state hospitals that qualify as teaching hospitals will receive a supplemental payment adjustment for direct medical education (DME) expenses. These payments will be made in order to encourage training in rural hospital and primary care settings and to recognize the loss of support for GME due to the advent of Managed Care capitated programs.~~

~~(B) In order to qualify as a teaching hospital and be deemed eligible for DME supplemental incentive payment adjustments, the hospital must:~~

~~(i) be licensed by the State of Oklahoma;~~

~~(ii) have costs associated with approved or certified Oklahoma medical residency programs in medicine, osteopathic medicine, and associated specialties and sub-specialties. An approved medical residency program is one approved by the Accrediting Council for Graduate Medical Education of the American Medical Association, by the Bureau of Professional Education of the American Osteopathic Association, or other professional accrediting associations. A resident is defined as a Post Graduate Year 1 (PGY1) and above resident who participates through hospital or hospital-based rotations in approved medical residency/internship programs in Family Medicine, Internal Medicine, Pediatrics, Surgery, Ophthalmology, Psychiatry, Obstetrics/Gynecology, Anesthesiology, Osteopathic medicine, or other Certified Medical Residencies, including specialties and sub-specialties as required in order to become certified by the appropriate board; and~~

~~(iii) apply for certification by the OHCA prior to receiving payments for any quarter during a State Fiscal year. To qualify, a hospital must have a contract with the Oklahoma Health Care Authority (OHCA) to provide Medicaid services and belong to The Council on Teaching Hospitals or otherwise show proof of affiliation with an approved Medical Education Program. Affiliation means an agreement to support the costs of medical residency education in the approved programs.~~

~~(iv) Federal and state hospitals, including Veteran's Administration, Indian Health Service/Tribal and Department of Mental Health Hospitals are not eligible for supplemental DME payments. Major teaching hospitals as defined in (5)(B)(i)(I) of this subsection are eligible.~~

~~(C) Determination of a hospital's eligibility for a DME supplemental payment adjustment will be done quarterly by the OHCA based on reports designed by the OHCA. The reports will detail the resident-months of support provided by the hospital and the total eligible Medicaid days of service from the paid claims for the same quarter and be attested to by the hospital Administrator, or designated personnel. The annual application must be attested to by the hospital administrator and by the residency program director. All reports will be subject to audit and payments will be recouped for inaccurate or false data. The amount of resident months will also be compared to the annual budgets of the schools, the annual HCFA form 2552 (Cost Report) and the monthly assignment schedules.~~

~~(D) An annual fixed DME payment pool will be established based on the State Matching funds made available by the University Hospitals Authority or other State agencies.~~

~~(E) The payments will be distributed based on the relative value of the weighted resident-months at each participating hospital. A resident-month is defined as a PGY1 and above resident full-time equivalent (FTE) for that month. Resident is defined in (B)(ii) of this paragraph. An FTE is defined as a resident assigned by the residency program to a rotation that is hospital or hospital-based. The resident must be assigned to a specific hospital for a supervised hospital-based residency experience. Required residency clinical or educational experience will be allowed. The time residents spend in non-provider settings such as free-standing clinics, nursing homes and physicians' offices in connection with approved programs may be included in determining the number of FTE's in the count if the following conditions are met:~~

~~(i) The resident spends his or her time in patient care activities.~~

~~(ii) The written agreement between the hospital and the non-hospital site must indicate that the hospital will incur the cost of the resident's salary and fringe benefits while the resident is training in the non-hospital site and the hospital is providing reasonable compensation to the non-hospital site for supervisory teaching activities.~~

~~(iii) The hospital must incur all or substantially all of the costs for the training program in the non-hospital setting, which means the residents' salaries and fringe benefits (including travel and lodging where applicable) and the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct graduate medical education.~~

~~(F) Training outside the formal residency program (moonlighting) is not eligible for this payment. The pool of available funds will be distributed quarterly based on the relative value of the eligible hospitals' resident-months weighted for Medicaid services rendered.~~

~~(i) The weighted relative value is determined as follows:~~

~~(I) Annually (prior to each state fiscal year) the OHCA will determine each participating hospital's individual acuity factor from data taken from the Oklahoma MMIS system (or reported claims data) by using the days of services and weights determined for the levels of care.~~

~~(II) Determine the total resident months from the quarterly reports in (7)(C) of this subsection for each hospital.~~

~~(III) Determine the total eligible patient days for the quarter from the quarterly reports in (7)(C) of this subsection for each hospital reporting.~~

~~(IV) Determine the relative value for each hospital. The relative value is defined as the product of the individual acuity factor [see (I) of this unit] times the total resident-months [see (II) of this unit] times the eligible patient days [see III of this unit].~~

~~(ii) The pool of available funds will be allocated quarterly based on the prior quarter's relative value as determined in (i)(IV) of this subparagraph. The per resident-month amount will be limited to $11,000 and the total payments will be limited to and not exceed the upper payment limits described in (G) of this paragraph.~~

~~(G) If payment in (D) of this paragraph causes total payments to exceed Medicare upper limits as required by CFR 447.272, the payment will be reduced to not exceed the Medicare upper limit.~~

~~(8) **Non-State Public Hospital Payment Adjustment.** Effective July 1, 2002, all Oklahoma non-state publicly owned hospitals (i.e., City, County or Title 60 Trust hospitals within the state of Oklahoma that are neither owned nor operated by the state of Oklahoma) shall qualify for a public hospital rate adjustment. The adjustment shall be equal to each eligible hospitals's pro rata share of a funding pool, based on the hospital's Medicaid utilization in the base year. The amount of the total pool will not be in excess of the aggregate Medicare related upper payment limit. The amount of the funding pool shall be determined by OHCA annually as follows:~~

~~(A) Using data from the most recently completed cost reports and Medicaid Management Information System data, the OHCA shall determine each non-state publicly owned hospital's Medicaid cost (using Medicare allowable cost reimbursement principles) and Medicaid payments.~~

~~(B) The base Medicaid cost will be trended forward using an annual DRI PPS-type hospital market basket index. Base year Medicaid payments will be trended by applicable updates to the payment rates.~~

~~(C) Once the Medicaid costs have been trended forward, the base Medicaid payments will be subtracted from the allowable costs. This difference for each hospital is their portion of the total available funding pool.~~

~~(D) The amount of each eligible hospital's payment adjustment shall be its pro rata percentage multiplied by the amount of the funding pool.~~

~~(E) Payment will be made on a quarterly basis.~~

~~(9) **Transplants.** In addition to the normal level of care per diem rate, an additional reimbursement amount may be negotiated, subject to the availability of services. The negotiated rate for the inpatient hospital charges associated with the transplant surgery shall not exceed 75 percent of the billed charges with a maximum payment of $150,000.~~

~~(10) **Prosthetic devices.** Payment for prosthetic devices implanted during surgery is included within the level of care per diem rates except for: Cochlear Implants, Vagus Nerve Stimulator, and implantable medication pumps. Additional payment will be considered on a case by case basis. A prior authorization from the Medical Professional Services Unit of the OHCA will be required.~~

~~(11) **Out-of-state hospitals.**~~

~~(A) Out-of-state hospitals, for which the Authority has on file a fiscal year 1989 or more recent cost report, shall be reimbursed as follows:~~

~~(i) the level of care per diem rate~~

~~(ii) a fixed capital per diem~~

~~(iii) a hospital-specific per diem direct medical education rate.~~

~~(B) Hospitals, for which the Authority does not have a fiscal year 1989 or more recent cost report on file, will also receive the level of care per diem rates; however, capital and direct medical education rate components will not be reimbursed on a hospital-specific basis. Instead, these hospitals shall receive the statewide median capital per diem amount. The statewide median direct medical education per diem rate will be paid to qualifying hospitals.~~

~~(C) In the absence of substantiating information verifying eligibility for the teaching hospital peer group, an out-of-state hospital will be presumed to be a non-teaching hospital and will be paid at the non-teaching rate for levels 7 and 8.~~

~~(D) In the absence of substantiating information verifying the presence of a burn unit or a level III NICU, an out-of-state hospital will be presumed to be ineligible for burn and NICU level of care payments.~~

~~(E) Out-of-state hospitals shall submit to the Authority the following documentation (as appropriate):~~

~~(i) Substantiating information verifying qualification as a teaching hospital~~

~~(ii) Substantiating information verifying presence of a burn unit~~

~~(iii) Substantiating information verifying presence of a NICU that meets Level III criteria established by the Health Planning Commission (now part of the Oklahoma Department of Health) in its 1988 Hospital Utilization and Plan Survey.~~

Reimbursement will be made for inpatient hospital services rendered on or after October 1, 2005, in the following manner:

(1) Covered inpatient services provided to eligible Medicaid recipients admitted to in-state acute care and critical access hospitals will be reimbursed at a prospectively set rate which compensates hospitals an amount per discharge for discharges classified according to the Diagnosis Related Group (DRG) methodology. For each Medicaid recipient's stay, a peer group base rate is multiplied by the relative weighting factor for the DRG which applies to the hospital stay. In addition to the DRG payment, an outlier payment may be made to the hospital for very high cost stays. Additional outlier payment is applicable if the DRG payment is less than $50,000 of the hospital cost. Each inpatient hospital claim is tested to determine whether the claim qualified for a cost outlier

payment. Payment is equal to 70% of the cost after the $50,000 threshold is met.

(2) The DRG payment and outlier, if applicable, represent full reimbursement for all non-physician services provided during the inpatient stay. Payment includes but is not limited to:

(A) laboratory services;

(B) prosthetic devices, including pacemakers, lenses, artificial joints, cochlear implants, implantable pumps;

(C) technical component on radiology services;

(D) transportation, including ambulance, to and from another facility to receive specialized diagnostic and therapeutic services;

(E) pre-admission diagnostic testing performed within 72 hours of admission; and

(F) organ transplants.

(3) Hospitals may submit a claim for payment only upon the final discharge of the patient or upon completion of a transfer of the patient to another hospital.

(4) Covered inpatient services provided to eligible recipients of the Oklahoma Medicaid program, when treated in out-of-state hospitals will be reimbursed in the same manner as in-state hospitals.

(5) Cases which indicate transfer from one acute care hospital to another will be monitored under a retrospective utilization review policy to help ensure that payment is not made for inappropriate transfers.

(6) If the transferring or discharge hospital or unit is exempt from the DRG, that hospital or unit will be reimbursed according to the method of payment applicable to the particular facility or units.

(7) Readmissions occurring within 15 days of prior acute care admission for a related condition will be reviewed under a retrospective utilization review policy to determine medical necessity and appropriateness of care. If it is determined that either or both admissions were unnecessary or inappropriate, payment for either or both admissions may be denied. Such review may be focused to exempt certain cases at the sole discretion of the OHCA.

(8) Hospital stays less than three days in length will be reviewed under a retrospective utilization review policy for medical necessity and appropriateness of care. (Discharges involving healthy mother and healthy newborns may be excluded from this review requirement.) If it is determined that the inpatient stay was unnecessary or inappropriate, the prospective payment for the inpatient stay will be denied.

(9) Organ transplants must be performed at an institution approved by the OHCA for the type of transplant provided. The transplant must be reviewed for medical appropriateness.

(10) Covered inpatient services provided in out-of-state specialty hospitals may be reimbursed at a negotiated rate not to exceed 100% of the cost to provide the service. Negotiation of rates will only be allowed when the OHCA determines that the specialty hospital or specialty unit provides a unique (non-experimental) service required by Medicaid recipients and the provider will not accept the DRG payment rate. Prior authorization is required.

(11) New providers entering the Medicaid program will be assigned a peer group and will be reimbursed at the peer group base rate for the DRG payment methodology or the statewide median rate for per diem methods.

(12) Payments will be made to hospitals qualifying for Disproportionate Hospital adjustments, and graduate medical education activities pursuant to the methodologies described in the Oklahoma Title XIX Inpatient Hospital Reimbursement Plan, effective date October 1, 2005, and incorporated herein by reference.

[OAR Docket #06-999; filed 5-22-06]

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

[OAR Docket #06-1022]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 6. Inpatient Psychiatric Hospitals
317:30-5-95. through 317:30-5-95.1. [AMENDED]
317:30-5-95.2. through 317:30-5-95.3. [REVOKED]
317:30-5-95.4. through 317:30-5-95.42. [NEW]
317:30-5-96. through 317:30-5-96.1. [REVOKED]
317:30-5-96.2. through 317:30-5-96.7. [NEW]
(Reference APA WF # 05-48)
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ANALYSIS:
Rules for Inpatient Psychiatric Hospitals are revised to: (1) reorganize the rules to be more user friendly for providers and recipients by adding definitions and grouping like facilities and services together; (2) remove the requirement for family members and guardians to be involved in a patient's treatment who is between the ages of 18 and 20 years old allowing the patient the right to make decisions regarding their treatment; (3) clarify that in instances where a parent or OKDHS worker cannot attend the Plan of Care meeting for a recipient, a faxed copy of the Plan of Care and signature is acceptable; and (4) clarifies that stamped and xeroxed signatures are not acceptable under any circumstances.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 6. INPATIENT PSYCHIATRIC HOSPITALS

317:30-5-95. General provisions and ~~Eligible~~ eligible providers

(a) ~~**Provider eligibility for psychiatric hospitals and residential treatment centers.** In order to be eligible for reimbursement, inpatient psychiatric facilities or programs must be accredited as described in (1) and (2) of this subsection and be appropriately licensed and certified by the State Survey Agency.~~ Inpatient psychiatric hospitals or psychiatric units provide treatment in a hospital setting 24 hours a day. Psychiatric Residential Treatment Facilities (PRTF) provide non-acute inpatient facility care for recipients who have a behavioral health disorder and need 24-hour supervision and specialized interventions. Payment for psychiatric and/or chemical dependency/detoxification services for adults between the ages of 21 and 64 are limited to acute inpatient hospital settings.

~~(1) **Psychiatric hospitals.** Psychiatric hospitals must request and be granted a contract with OHCA to provide inpatient psychiatric services for persons under 21 years of age. The contract request must include copies of the State licenses, Joint Commission on Accreditation of Healthcare Organizations (JCAHO) certificate, and the facility utilization plan.~~

~~(2) **Residential treatment centers (under age 21 only).** Residential treatment centers (RTC) must be licensed by the State, as appropriate. The facility must request and be granted a contract with OHCA to provide inpatient psychiatric services for persons under 21 years of age. The contract request must include copies of the State licenses, JCAHO or the American Osteopathic Association (AOA) accreditation certificate, seclusion and restraint attestation letter, last survey report, and the facility utilization plan. RTC facilities may substitute accreditation from the Commission on Accreditation of Rehabilitation Facilities (CARF) for JCAHO/AOA accreditation.~~

~~(b) **Provider eligibility for psychiatric hospitals for person over 65.** The facility must be appropriately licensed as a psychiatric hospital and meet the conditions specified in 42 CFR 440.140, as a psychiatric hospital certified under Medicare standards for participation. The facility must request and be granted a mental health contract with the Authority for services to persons 65 years of age and over. With the request the facility must submit a copy of the state license, JCAHO accreditation certificate, and last survey report, a copy of the Medicare certification and survey report, and a copy of facility utilization review plan.~~

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

(1) "AOA" means American Osteopathic Accreditation.

(2) "CARF" means the Commission on Accreditation of Rehabilitation Facilities.

(3) "JCAHO" means Joint Commission on Accreditation of Healthcare Organizations.

(4) "Psychiatric Residential Treatment Facility" (PRTF) means a facility other than a hospital.

~~(c) **Seclusion and restraint reporting requirements.**~~

~~(1) The Oklahoma Health Care Authority (OHCA) requires a psychiatric residential treatment facility that provides Medicaid inpatient psychiatric services to individuals under age 21 to attest, in writing, that the facility is in compliance with all of the standards governing the use of restraint and seclusion. The attestation letter must be signed by an individual who has the legal authority to obligate the facility.~~

~~(2) The attestation letter at a minimum must include:~~

~~(A) the name and address, telephone number of the facility, and a provider identification number;~~

~~(B) the signature and title of the individual who has the legal authority to obligate the facility;~~

~~(C) the date the attestation is signed;~~

~~(D) a statement certifying that the facility currently meets all of the requirements governing the use of restraint and seclusion;~~

~~(E) a statement acknowledging the right of the State Survey Agency (or its agents) and, if necessary, Center for Medicare/Medicaid Services (CMS) to conduct an on-site survey at any time to validate the facility's compliance with the requirements of the rule, to investigate complaints lodged against the facility, or to investigate serious occurrences;~~

~~(F) a statement that the facility will notify the State Medicaid Agency if it no longer complies with the requirements; and~~

~~(G) a statement that the facility will submit a new attestation of compliance in the event the individual who has the legal authority to obligate the facility is no longer in such position.~~

~~(3) Each psychiatric RTC is required to report a resident's death, serious injury, and a resident's suicide attempt to the State Medicaid agency, and unless prohibited by state law, to the state-designated Protection and Advocacy System (P and As). In addition to reporting requirements contained in this section, facilities must report the death of any resident to the CMS regional office no later than close of business the next business day after the resident's death. Staff must document in the resident's record that that death was reported to the CMS regional office.~~

~~(4) OHCA has established a system to accept and monitor the reports of serious occurrences submitted by the psychiatric RTC. OHCA will share this information with the State Survey Agency.~~

(c) **Hospitals and freestanding psychiatric facilities.** To be eligible for payment under this Section, inpatient psychiatric programs must be provided to eligible Medicaid recipients in a hospital that is:

(1) appropriately licensed and surveyed by the state survey agency;

(2) accredited by JCAHO; and

(3) have a contract to participate in Oklahoma Medicaid.

(d) **Psychiatric Residential Treatment Facility (PRTF).** A PRTF is any non-hospital facility with a provider agreement with OHCA to provide the inpatient services benefit to Medicaid eligible individuals under the age of 21. To enroll as a hospital-based or freestanding PRTF, the provider must be appropriately state licensed pursuant to Title 10 O.S. §402 and approved by the OHCA to provide services to individuals under age 21. Out-of-state PRTFs should be appropriately licensed in the state in which they do business. In addition, the following requirements must be met:

(1) **Restraint and seclusion reporting requirements.** In accordance with Federal Regulations at 42 CFR 483.50, the OHCA requires a PRTF that provides Medicaid inpatient psychiatric services to individuals under age 21 to attest, in writing, that the facility is in compliance with all of the standards governing the use of restraint and seclusion. The attestation letter must be signed by an individual who has the legal authority to obligate the facility.

(2) **Attestation letter.** The attestation letter at a minimum must include:

(A) the name and address, telephone number of the facility, and a provider identification number;

(B) the signature and title of the individual who has the legal authority to obligate the facility;

(C) the date the attestation is signed;

(D) a statement certifying that the facility currently meets all of the requirements governing the use of restraint and seclusion;

(E) a statement acknowledging the right of the State Survey Agency (or its agents) and, if necessary, Center for Medicare and Medicaid Services (CMS) to conduct an on-site survey at any time to validate the facility's compliance with the requirements of the rule, to investigate complaints lodged against the facility, or to investigate serious occurrences;

(F) a statement that the facility will notify the State Medicaid Agency if it no longer complies with the requirements; and

(G) a statement that the facility will submit a new attestation of compliance in the event the individual who has the legal authority to obligate the facility is no longer in such position.

(3) **Reporting of serious injuries or deaths.** Each PRTF is required to report a resident's death, serious injury, and a resident's suicide attempt to the State Medicaid agency, and unless prohibited by state law, to the state-designated Protection and Advocacy System (P and As). In addition to reporting requirements contained in this section, facilities must report the death of any resident to the CMS regional office no later than close of business the next business day after the resident's death. Staff must document in the resident's record that the death was reported to the CMS Regional Office.

(e) **Required documents.** The required documents for enrollment for each participating provider can be downloaded from the agency website.

317:30-5-95.1. Coverage for adults ages 21 to 64

~~For persons 21 years of age or older, payment is made to hospitals for services as described in this Section.~~ Coverage for adults age 21 to 64 is limited to services in acute inpatient hospital settings (see OAC 317:30-5-95). OHCA rules that apply to inpatient psychiatric coverage for adults ages 21 to 64 are found in Sections OAC 317:30-5-95.2 through 317:30-5-95.10.

~~(1) **Payment.** Payment is made for medically necessary inpatient acute psychiatric services for persons over 65 years of age.~~

~~(2) **Utilization control requirements.** Federal regulations require that medical records include the following factors, all of which must be met for the Medicaid services to be compensable:~~

~~(A) **Certification and recertification of need for inpatient care.** The certification and recertification of need for inpatient care must be in writing and must be signed and dated by the physician who has knowledge of the case that continued inpatient psychiatric care is required. The certification and recertification documents for all Medicaid patients must be maintained in the patient's medical records or in a central file at the facility where the patient is or was a resident.~~

~~(i) **Certification.** A physician must certify for each applicant or recipient that inpatient services in a mental hospital are/or were needed. The certification must be made at the time of admission or, if an individual applies for assistance while in a mental hospital, before the Medicaid agency authorizes payment.~~

~~(ii) **Recertification.** A physician must recertify for each applicant or recipient that inpatient services in the mental hospital are needed. Recertification must be made at least every 60 days after certification.~~

~~(B) **Individual written plan of care.**~~

~~(i) Before admission to a mental hospital or immediately after admission, the attending physician or staff physician must establish a written plan of care for each applicant or recipient. The plan of care must include:~~

~~(I) Diagnoses, symptoms, complaints, and complications indicating the need for admission,~~

~~(II) A description of the functional level of the individual,~~

~~(III) Objectives,~~

~~(IV) Any order for medication, treatments, restorative and rehabilitative services, activities, therapies, social services, diet and special procedures recommended for the health and safety of the patient,~~

~~(V) Plans for continuing care, including review and modification to the plan of care, and~~

~~(VI) Plans for discharge.~~

~~(ii) The attending or staff physician and other personnel involved in the recipient's care must review each plan of care at least every seven days.~~

~~(iii) All plans of care and plan of care reviews must be clearly identified as such in the patient's medical records. All must be signed and dated by the physician and other treatment team members in the required review interval.~~

~~(iv) The plan of care must document appropriate patient participation in the development and implementation of the treatment plan.~~

~~(C) **Physician review of prescribed medications.** All prescribed medications must be reviewed by the physician at least every seven days; and the review must be documented in the patient's medical record by the physician signing his/her name and title and dating the orders.~~

~~(D) **Medical psychiatric and social evaluations.** The patient's record must contain complete medical, psychiatric and social evaluations.~~

~~(i) The evaluations must be completed as follows:~~

~~(I) History and Physical must be completed within 60 hours of admission by a licensed independent practitioner [M.D., D.O., Advanced Practice Nurse Practitioner (A.P.N.P.), or Physician Assistant (P. A.)].~~

~~(II) Psychiatric Evaluation must be completed within 60 hours of admission by a M.D. or D.O.~~

~~(III) Psychosocial Evaluation must be completed within seven days of admission by a licensed independent practitioner (M.D., D.O., A.P.N.P., or P.A.) or a mental health professional as defined in OAC 317:30-5-240(c).~~

~~(ii) The evaluations must be clearly identified as such and must be signed and dated by the evaluator.~~

~~(E) **Active treatment.** Active treatment must be provided to each patient. The active treatment program must be appropriate to the needs of the patient and be directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.~~

~~(F) **Nursing services.** Each facility must have a qualified Director of Psychiatric Nursing. In addition to the Director of Nursing, there must be adequate numbers of registered nurses, licensed practical nurses, and mental health workers to provide nursing care necessary under the active treatment program and to maintain progress notes on each patient. A registered nurse must document patient progress at least weekly. The progress note must contain recommendations for revisions in the treatment plan, as needed, as well as an assessment of the patient's progress as it relates to the treatment plan goals and objectives.~~

~~(G) **Therapeutic services.** An interdisciplinary team of a physician, mental health professional(s), registered nurse, and other staff who provide services to patients in the facility oversee all components of the active treatment and provide services appropriate to their respective discipline. The team developing the individual plan of care must include, at a minimum, the following:~~

~~(i) Allopathic or Osteopathic Physician with a current license and a board certification/eligible in psychiatry, or a current resident in psychiatry practicing as described in OAC 317:30-5-2(a)(1)(U), and~~

~~(ii) a mental health professional licensed to practice by one of the following boards: Psychology (health service specialty only); Social Work (clinical specialty only); Licensed Professional Counselor, Licensed Behavioral Practitioner, (or) Licensed Marriage and Family Therapist or Advanced Practice Nurse (certified in a psychiatric mental health specialty, licensed as a registered nurse with a current certification of recognition from the Board of Nursing in the state in which the services are provided), and~~

~~(iii) a registered nurse with a minimum of two years of experience in a mental health treatment setting.~~

~~(H) **Discharge plan.** Each patient must have a discharge plan that includes a recapitulation of the patient's hospitalization, recommendations for follow-up and aftercare, and a summary of the patient's condition at discharge.~~

~~(I) **Continued stay review.** The facility must complete a continued stay review at least every 90 days each time the facility utilization review~~

~~committee determines that the continued inpatient psychiatric hospital stay is required.~~

~~(i) The methods and criteria for continued stay review must be contained in the facility utilization review plan.~~

~~(ii) Documentation of the continued stay review must be clearly identified as such, signed and dated by the committee chairperson, and must clearly state the continued stay dates and time period approved.~~

317:30-5-95.2. Coverage for children [REVOKED]

~~The following apply to coverage for inpatient services for persons under age 21 in acute care hospitals, freestanding psychiatric hospitals and residential psychiatric treatment facilities:~~

~~(1) **Pre-authorization of inpatient psychiatric services.** All inpatient psychiatric services for patients under 21 years of age must be prior authorized by an agent designated by the Oklahoma Health Care Authority. All inpatient acute and residential psychiatric services will be prior authorized for an approved length of stay. Non-authorized inpatient psychiatric services will not be Medicaid compensable.~~

~~(A) **Length of stay.** The designated agent will prior authorize all services for an approved length of stay based on the medical necessity criteria described in (2)(A)-(G) of this subsection.~~

~~(B) **Facility placements.** Out of state placements must be approved by the agent Designated by OHCA and subsequently approved by OHCA Medicaid/Medical Services Division. Requests for admission to Residential Treatment Centers or Acute Care Units will be reviewed for consideration of level of care, availability, suitability and proximity of suitable services. A prime consideration for placements will be proximity to the family or guardian in order to involve the family or guardian in Active Treatment, including discharge and reintegration planning. Out of state facilities are responsible for insuring appropriate medical care as needed under Oklahoma Medicaid provisions as part of the per diem rate.~~

~~(2) **Inpatient services.**~~

~~(A) **Inpatient service limitations.** Inpatient psychiatric services in all hospitals and residential psychiatric treatment facilities are limited to the approved length of stay. The Agent designated by OHCA will approve lengths of stay using the current OHCA Behavioral Health medical necessity criteria and following the current gatekeeping manual approved by the OHCA. The approved length of stay applies to both hospital and physician services.~~

~~(B) **Medical necessity criteria for acute psychiatric admissions.** Acute psychiatric admissions for children 13 or older must meet the terms and conditions contained in (i),(ii),(iii) and two of the (iv)(I) to (v)(III) of this subparagraph. Children 12 or younger must meet the terms or conditions contained in (i),(ii),(iii) and one of (iv)(I) to (iv)(IV), and one of (v)(I) to (v)(III) of this subparagraph.~~

~~(i) Any DSM-IV-R Axis 1 primary diagnosis with the exception of V-codes, adjustment disorders, and substance related disorders, accompanied by a detailed description of the symptoms supporting the diagnosis. In lieu of a qualifying Axis I diagnosis, children 18-21 years of age may have an Axis II diagnosis of any personality disorder.~~

~~(ii) Conditions are directly attributable to a mental disorder as the primary need for professional attention (this does not include placement issues, criminal behavior, status offenses). Adjustment or substance related disorder may be a secondary Axis I diagnosis.~~

~~(iii) It has been determined by the Gatekeeper that the current disabling symptoms could not have been managed or have not been manageable in a lesser intensive treatment program.~~

~~(iv) Within the past 48 hours the behaviors present an imminent life threatening emergency such as evidenced by:~~

~~(I) Specifically described suicide attempts, suicide intent, or serious threat by the patient.~~

~~(II) Specifically described patterns of escalating incidents of self-mutilating behaviors.~~

~~(III) Specifically described episodes of unprovoked significant physical aggression and patterns of escalating physical aggression in intensity and duration.~~

~~(IV) Specifically described episodes of incapacitating depression or psychosis that result in an inability to function or care for basic needs.~~

~~(v) Requires secure 24-hour nursing/medical supervision as evidenced by:~~

~~(I) Stabilization of acute psychiatric symptoms.~~

~~(II) Needs extensive treatment under physician direction.~~

~~(III) Physiological evidence or expectation of withdrawal symptoms which require 24-hour medical supervision.~~

~~(C) **Medical necessity criteria for continued stay - acute psychiatric admission.** Continued stay - acute psychiatric admissions must meet all of the conditions set forth in (i) to (iv) of this subparagraph.~~

~~(i) Any DSM-IV-R axis 1 primary diagnosis with the exception of V-Codes, adjustment disorders, and substance abuse related disorders, accompanied by a detailed description of the symptoms supporting the diagnosis. In lieu of a qualifying Axis I diagnosis, children 18-20 years of age may have an Axis II diagnosis of any personality disorder. Adjustment or substance related disorders may be a secondary Axis I diagnosis.~~

~~(ii) Patient continues to manifest a severity of illness that requires an acute level of care as defined in the admission criteria and which could not be provided in a less restrictive setting.~~

~~(I) Documentation of regression is measured in behavioral terms.~~

~~(II) If condition is unchanged, evidence of re-evaluation of treatment objectives and therapeutic interventions.~~

~~(iii) Conditions are directly attributable to a mental disorder as the primary need for professional attention (this does not include placement issues, criminal behavior, status offenses).~~

~~(iv) Documented efforts of working with child's family, legal guardians and/or custodians and other human service agencies toward a tentative discharge date.~~

~~(D) **Medical necessity criteria for admission - inpatient chemical dependency detoxification.** Inpatient chemical dependency detoxification admissions must meet the terms and conditions contained in (i),(ii),(iii), and one of (iv)(I)-(iv)(IV) of this subparagraph.~~

~~(i) Any psychoactive substance dependency disorder described in DSM-IV-R with detailed symptoms supporting the diagnosis and need for medical detoxification, except for cannabis, nicotine, or caffeine dependencies.~~

~~(ii) Conditions are directly attributable to a substance dependency disorder as the primary need for professional attention (this does not include placement issues, criminal behavior, status offenses).~~

~~(iii) It has been determined by the gatekeeper that the current disabling symptoms could not be managed or have not been manageable in a lesser intensive treatment program.~~

~~(iv) Requires secure 24-hour nursing/medical supervision as evidenced by:~~

~~(I) Need for active and aggressive pharmacological interventions.~~

~~(II) Need for stabilization of acute psychiatric symptoms.~~

~~(III) Need extensive treatment under physician direction.~~

~~(IV) Physiological evidence or expectation of withdrawal symptoms which require 24-hour medical supervision.~~

~~(E) **Medical necessity criteria for continued stay - inpatient chemical dependency program.** No continued stay in inpatient chemical dependency program is allowed. Initial certification for admission is limited to up to five days; exceptions may be made up to seven to eight days based on a case by case review.~~

~~(F) **Medical necessity criteria for admission - residential treatment (psychiatric and chemical dependency).** Residential Treatment Center admissions must meet the terms and conditions in (i) to (iv) and one of (v)(I)-(v)(IV), and one of (vi)(I)-(vi)(III) of this subparagraph.~~

~~(i) Any DSM-IV-R Axis 1 primary diagnosis with the exception of V-codes, adjustment disorders, and substance related disorders, accompanied by detailed symptoms supporting the diagnosis. In lieu of a qualifying Axis I diagnosis, children 18-20 years of age may have an Axis II diagnosis of any personality disorder. Adjustment or substance related disorders may be a secondary Axis I diagnosis.~~

~~(ii) Conditions are directly attributed to a mental disorder as the primary reason for professional attention (this does not include placement issues, criminal behavior, status offenses).~~

~~(iii) Patient has either received treatment in an acute care setting or it has been determined by the gatekeeper that the current disabling symptoms could not or have not been manageable in a less intensive treatment program.~~

~~(iv) Child must be medically stable.~~

~~(v) Patient demonstrates escalating pattern of self injurious or assaultive behaviors as evidenced by:~~

~~(I) Suicidal ideation and/or threat.~~

~~(II) History of or current self-injurious behavior.~~

~~(III) Serious threats or evidence of physical aggression.~~

~~(IV) Current incapacitating psychosis or depression.~~

~~(vi) Requires 24-hour observation and treatment as evidenced by:~~

~~(I) Intensive behavioral management.~~

~~(II) Intensive treatment with the family/guardian and child in a structured milieu.~~

~~(III) Intensive treatment in preparation for re-entry into community.~~

~~(G) **Medical necessity criteria for continued stay - residential treatment center.** Continued stay residential treatment center admissions must meet the terms and conditions contained in (i), (ii), (v), (vi), and either (iii) or (iv) of this subparagraph.~~

~~(i) Any DSM-IV-R Axis 1 primary diagnosis with the exception of V-codes, adjustment disorders, and substance abuse related disorders, accompanied by detailed symptoms supporting the diagnosis. In lieu of a qualifying Axis I diagnosis, children 18-20 years of age may have an Axis II diagnosis of any personality disorder.~~

~~(ii) Conditions are directly attributed to a mental disorder as the primary reason for continued stay (this does not include placement issues, criminal behavior, status offenses).~~

~~(iii) Patient is making measurable progress toward the treatment objectives specified in the treatment plan.~~

~~(I) Progress is measured in behavioral terms and reflected in the patient's treatment and discharge plans.~~

~~(II) Patient has made gains toward social responsibility and independence.~~

~~(III) There is active, ongoing psychiatric treatment and documented progress toward the treatment objective and discharge.~~

~~(IV) There are documented efforts and evidence of active involvement with the family, guardian, child welfare worker, extended family, etc.~~

~~(iv) Child's condition has remained unchanged or worsened.~~

~~(I) Documentation of regression is measured in behavioral terms.~~

~~(II) If condition is unchanged, there is evidence of re-evaluation of the treatment objectives and therapeutic interventions.~~

~~(v) There is documented continuing need for 24 hour observation and treatment as evidenced by:~~

~~(I) Intensive behavioral management.~~

~~(II) Intensive treatment with the family/guardian and child in a structured milieu.~~

~~(III) Intensive treatment in preparation for re-entry into community.~~

~~(vi) Documented efforts of working with child's family, legal guardian and/or custodian and other human service agencies toward a tentative discharge date.~~

~~(3) **Pre-authorization and extension procedures.**~~

~~(A) Pre-admission authorization for inpatient psychiatric services must be requested from the OHCA designated agent. The OHCA or designated agent will evaluate and render a decision within 24 hours of receiving the request. A Certificate of Need will be issued by the OHCA or its designated agent, if the recipient meets medical necessity criteria.~~

~~(B) Extension requests (psychiatric) must be made through the OHCA designated agent. All requests shall be made prior to the expiration of the approved extension following the guidelines in the Gatekeeping Manual. Extension requests for the continued stay of a child who has been in an acute psychiatric program for a period of 30 days will require an evaluation by the gatekeeper and/or OHCA designated agent to determine the efficacy of treatment. Requests for the continued stay of a child who has been in an acute psychiatric program for a period of 60 days will require a review of all treatment documentation completed by the OHCA designated agent.~~

~~(C) If a denial decision is made, a reconsideration request may be made directly to the OHCA designated agent within 10 working days of notification of the denial. The agent will return a decision within 10 working days from the time of receiving the reconsideration request. If the denial decision is up held, the denial can be appealed to the Oklahoma Health Care Authority within 20 working days of notification of the denial by the OHCA designated agent.~~

~~(4) **Quality of care requirements.**~~

~~(A) **Admission requirements.**~~

~~(i) At the time of admission to an inpatient psychiatric program, the admitting facility will provide the patient and their family or guardian with written explanation of the facility's policy regarding the following:~~

~~(I) Patient rights.~~

~~(II) Behavior Management of patients in the care of the facility.~~

~~(III) Patient Grievance procedures.~~

~~(IV) Information for contact with the Office of Client Advocacy.~~

~~(V) Seclusion and Restraint Policy.~~

~~(ii) At the time of admission to an inpatient psychiatric program, the admitting facility will provide the patient and their family or guardian with the guidelines for the conditions of family or guardian participation in the treatment of their child. The written Conditions of Participation are provided for the facility by the Oklahoma Health Care Authority. These guidelines specify the conditions of the family or guardian's participation in "Active Treatment". The signature of the family member or guardian acknowledges their understanding of the conditions of their participation in "Active Treatment" while the patient remains in the care of the facility. The conditions include provisions of participation required for the continued Medicaid compensable treatment.~~

~~(B) **Individual plan of care.**~~

~~(i) "Individual plan of Care" means a written plan developed for each recipient within four days of any admission to an inpatient program which includes:~~

~~(I) the complete record of the DSM IV five axis diagnosis, including the corresponding symptoms, complaints, and complications indicating the need for admission,~~

~~(II) the current functional level of the individual,~~

~~(III) treatment goals and measurable time limited objectives,~~

~~(IV) any orders for psychotropic medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet and special procedures recommended for the health and safety of the patient,~~

~~(V) plans for continuing care, including review and modification to the plan of care, and~~

~~(VI) plan for discharge, all of which is developed to improve the child's condition to the~~

~~extent that the inpatient care is no longer necessary.~~

~~(ii) The individual plan of care:~~

~~(I) must be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral and developmental aspects of the individual patient and reflects the need for inpatient psychiatric care;~~

~~(II) must be developed by a team of professionals as specified in (D) of this paragraph in collaboration with the recipient, and his/her parents, legal guardians, or others in whose care he/she will be released after discharge;~~

~~(III) must establish treatment goals that are general outcome statements and reflective of informed choices of the patient served. Additionally, the treatment goal must be appropriate to the patient's age, culture, strengths, needs, abilities, preferences and limitations;~~

~~(IV) must establish measurable and time limited treatment objectives that reflect the expectations of the patient served and parent/legal guardian as well as being age, developmentally and culturally appropriate. The treatment objectives must be achievable and understandable to the patient and the parent/guardian. The treatment objectives also must be appropriate to the treatment setting and list the frequency of the service;~~

~~(V) must prescribe an integrated program of therapies, activities and experiences designed to meet the objectives;~~

~~(VI) must include specific discharge and after care plans that are appropriate to the patient's needs and effective on the day of discharge. At the time of discharge, after care plans will include the specific appointment date(s), names and addresses of service provider(s) and related community services to ensure continuity of care and reintegration for the recipient into their family school, and community.~~

~~(VII) must be reviewed at least every seven days by the team specified to determine that services are being appropriately provided and to recommend changes in the individual care plan as indicated by the recipient's overall adjustment, progress, symptoms, behavior, and response to treatment;~~

~~(VIII) development and review must satisfy the utilization control requirements for physician re-certification and establishment of periodic reviews of the individual plan of care; and,~~

~~(IX) and each individual plan of care review must be clearly identified as such and be signed and dated by the physician, licensed mental health professional, patient, parent/guardian, registered nurse, and other required team members. Individual plans of care and individual plan of care reviews not completed and appropriately signed will merit a penalty recoupment or will render those days non-compensable for Medicaid.~~

~~(C) **Active treatment.** Inpatient psychiatric programs must provide "Active Treatment". "Active Treatment" involves the patient and their family or guardian from the time of an admission throughout the treatment and discharge process. "Active Treatment" also includes an ongoing program of assessment, diagnosis, intervention, evaluation of care and treatment, and planning for discharge and aftercare under the direction of a physician. "Active Treatment" consists of integrated therapy components that are provided on a regular basis and will remain consistent with the patient's ongoing needs for care. The following components meet the minimum standards required for "Active Treatment", although an individual child's needs for treatment may exceed this minimum standard:~~

~~(i) Individual treatment provided by the physician. Individual treatment provided by the physician, is required three times per week for acute care and one time a week for residential care. Weekly residential treatment provided by the physician will never exceed 10 days between sessions. Individual treatment provided by the physician may consist of therapy or medication management intervention for acute and residential programs.~~

~~(ii) Individual therapy. Individual therapy is defined as a method of treating existing primary mental health disorders and/or any secondary alcohol and other drug (AOD) disorders using face to face, one on one interaction between a Mental Health Professional (MHP) and a patient to promote emotional or psychological change to alleviate disorders. MHP's performing this service must use and document an approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. Ongoing assessment of the patient's status and response to treatment as well as psycho educational intervention are appropriate components of individual therapy. Individual therapy must be provided in a confidential setting. The therapy must be goal directed utilizing techniques appropriate to the individual patient's plan of care and the patient's developmental and cognitive abilities. Individual therapy must be provided two hours per week in acute care and one hour per week in residential treatment by a mental health professional as described in OAC 317:30-5-240(c). One hour of family therapy may be substituted for one hour of individual therapy at the treatment teams discretion.~~

~~(iii) Family therapy. Family therapy is defined as interaction between a MHP, patient and family member(s) to facilitate emotional, psychological or behavioral changes and promote successful communication and understanding. The focus of family therapy must be directly related to the goals and objectives on the individual patient's plan of care. Family therapy must be provided one hour per week for acute care and residential treatment. One hour of individual therapy addressing relevant family issues may be substituted for a family session in an instance in which the family is unable to attend a scheduled session by a mental health professional as described in OAC 317:30-5-240(c).~~

~~(iv) Process group therapy. Process group therapy is defined as a method of treating existing primary mental health disorders and/or any secondary AOD disorders using the interaction between a mental health professional as defined in OAC 317:30-5-240(c), and two or more patients to promote positive emotional or behavioral change. The focus of the group must be directly related to goals and objectives on the individual patient's plan of care. The individual patient's behavior and the focus of the group must be included in each patient's medical record. This service does not include social skills development or daily living skills activities and must take place in an appropriate confidential setting, limited to the therapist, appropriate hospital staff, and group members. Group therapy must be provided three hours per week in acute care and two hours per week in residential treatment by a mental health professional as defined in OAC 317:30-5-240(c). In lieu of one hour of process group therapy, one hour of expressive group therapy may be substituted.~~

~~(v) Expressive group therapy. Expressive group therapy is defined as art, music, dance, movement, poetry, drama, psychodrama, structured therapeutic physical activities, experiential (ROPES), recreational, or occupational therapies. Through active expression, inner strengths are discovered that can help the patient deal with past experiences and cope with present life situations in more beneficial ways. The focus of the group must be directly related to goals and objectives on the individual patient's plan of care. Documentation must include how the patient is processing emotions/feelings. Expressive therapy must be a planned therapeutic activity, facilitated by staff with a relevant Bachelor's degree and/or staff with relevant training, experience, or certification to facilitate the therapy. Expressive group therapy must be provided four hours per week in acute care and three hours per week in residential treatment. In lieu of one hour of expressive group therapy, one hour of process group therapy may be substituted.~~

~~(vi) Group Rehabilitative treatment. Group rehabilitative treatment is defined as behavioral health remedial services, as specified in the individual treatment plan which are necessary for the treatment of the existing primary mental health disorders and/or any secondary AOD disorders. Examples of educational and supportive services, which may be covered under the definition of group rehabilitative treatment services, are basic living skills, social skills (re)development, interdependent living, self care, lifestyle changes and recovery principles. Each service provided under group rehabilitative treatment services must have goals and objectives, directly related to the individual plan of care. Group rehabilitative treatment services will be provided two hours each day for all inpatient psychiatric care. In lieu of two hours of group rehabilitative services per day, one hour of individual rehabilitative services per day may be substituted.~~

~~(vii) Individual rehabilitative treatment. Individual rehabilitative treatment is defined as a face to face service which is performed to assist patients who are experiencing significant functional impairment due to the existing primary mental disorder and/or any secondary AOD disorder in order to increase the skills necessary to perform activities of daily living. Services will be for the reduction of psychiatric and behavioral impairment and the restoration of functioning consistent with the requirements of independent living and enhanced self sufficiency. This service includes educational and supportive services regarding independent living, self care, social skills (re)development, lifestyle changes and recovery principles and practices. Each individual rehabilitative treatment service provided must have goals and objectives directly related to the individualized plan of care and the patient's diagnosis. One hour of individual rehabilitative treatment service may be substituted daily for the two hour daily group rehabilitative services requirement.~~

~~(D) **Credentialing requirements for treatment team members.** The team developing the individual plan of care must include, at a minimum, the following:~~

~~(i) Allopathic or Osteopathic Physician with a current license and a board certification/eligible in psychiatry, or a current resident in psychiatry practicing as described in OAC 317:30-5-2(a)(1)(U), and~~

~~(ii) a mental health professional licensed to practice by one of the following boards: Psychology (health service specialty only); Social Work (clinical specialty only); Licensed Professional Counselor, Licensed Behavioral Practitioner, (or) Licensed Marriage and Family Therapist or Advanced Practice Nurse (certified in a psychiatric~~

~~mental health specialty, licensed as a registered nurse with a current certification of recognition from the Board of Nursing in the state in which the services are provided), and~~

~~(iii) a registered nurse with a minimum of two years of experience in a mental health treatment setting.~~

(E) **Treatment team.** ~~An interdisciplinary team of a physician, mental health professionals, registered nurse, patient, parent/legal guardian, and other personnel who provide services to patients in the facility must develop the individual plan of care, oversee all components of the active treatment and provide the services appropriate to their respective discipline. Based on education and experience, preferably including competence in child psychiatry, the teams must be capable of:~~

~~(i) Assessing the recipient's immediate and long range therapeutic needs, developmental priorities and personal strengths and liabilities,~~

~~(ii) Assessing the potential resources of the recipient's family, and actively involving the family in the ongoing plan of care,~~

~~(iii) Setting treatment objectives,~~

~~(iv) Prescribing therapeutic modalities to achieve the plan objectives, and~~

~~(v) Developing appropriate discharge criteria and plans.~~

~~(F)~~ ~~**Medical, psychiatric and social evaluations.**~~ ~~The patient's medical record must contain complete medical, psychiatric and social evaluations.~~

~~(i) The evaluations must be completed as follows:~~

~~(I) History and physical evaluation must be completed within 60 hours of admission by a licensed independent practitioner (M.D., D.O., A.P.N.P., or P.A.).~~

~~(II) Psychiatric evaluation must be completed within 60 hours of admission by a M.D. or D.O.~~

~~(III) Psychosocial evaluation must be completed within seven days of admission by a licensed independent practitioner (M.D., D.O., A.P.N.P., or P.A.) or a mental health professional as defined in OAC 317:30-5-240(c).~~

~~(ii) Each of the evaluations must be clearly identified as such and must be signed and dated by the evaluators.~~

~~(iii) Each of the evaluations must be completed when the patient changes levels of care if the existing evaluation is more than 30 days from admission. Evaluations remain current for 12 months from the date of admission and must be updated annually.~~

~~(G)~~ ~~**Nursing services (inpatient psychiatric acute only).**~~ ~~Each facility must have a qualified Director of Psychiatric Nursing. In addition to the Director of Nursing, there must be adequate numbers of registered nurses, licensed practical nurses, and mental health workers to provide nursing care necessary under the active treatment program and to maintain progress notes on each patient. A registered nurse must document patient progress at least weekly. The progress note must contain recommendations for revisions in the treatment plan, as needed, as well as an assessment of the patient's progress as it relates to the treatment plan goals and objectives.~~

~~(H)~~ ~~**Seclusion and restraint incident reporting requirements.**~~ ~~The process by which a facility is required to inform the OHCA of a death, serious injury, or suicide attempt is as follows:~~

~~(i) The hospital administrator, executive director, or designee is required to contact the OHCA Behavioral Health Unit by phone no later than 5:00 p.m. on the business day following the incident.~~

~~(ii) Information regarding the Medicaid recipient involved, the basic facts of the incident, and follow up to date must be reported. The agency will be asked to supply, at a minimum, follow-up information with regard to patient outcome, staff debriefing and programmatic changes implemented (if applicable).~~

~~(iii) Within three days, the OHCA Behavioral Health Unit must receive the above information in writing (example: Facility Critical Incident Report).~~

~~(iv) Patient death must be reported to the OHCA as well as to the Center for Medicare/Medicaid Regional office in Dallas, Texas.~~

~~(v) Compliance with seclusion and restraint reporting requirements will be verified during the onsite inspection of care (Section 5, Quality of Care), or using other methodologies.~~

~~(I)~~ ~~**Other required standards.**~~ ~~The provider is required to maintain all programs and services according to applicable Code of Federal Regulations (CFR) requirements, JCAHO/AOA standards for Behavioral Health Care, State Department of Health Hospital Standards for Psychiatric Care, and State Department of Human Services Licensing Standards for Residential Treatment Facilities. Residential treatment facilities may substitute CARF accreditation in lieu of JCAHO or AOA accreditation.~~

~~(5)~~ ~~**Documentation of records.**~~

~~(A) All documentation for services provided under active treatment must be documented in an individual note and reflect the content of each session provided. Individual, Family, Process Group, Expressive Group, Individual Rehabilitative and Group Rehabilitative Services documentation must include, at a minimum, the following:~~

~~(i) date;~~

~~(ii) start and stop time for each session;~~

~~(iii) signature of the therapist and/or staff;~~

~~(iv) credentials of the therapist;~~

~~(v) specific problem(s) addressed (problems must be identified on the plan of care);~~

~~(vi) method(s) used to address problems;~~

~~(vii) progress made towards goals;~~

~~(viii) patient's response to the session or intervention; and~~

~~(ix) any new problem(s) identified during the session.~~

~~(B) Signatures of the patient, parent/ guardian, doctor, MHP, and RN are required on the Master Plan of Care and all plan of care reviews. The plan of care and plan of care review are not valid until signed and separately dated by the patient, parent/legal guardian, doctor, RN, MHP, and all other requirements are met.~~

~~(6) **Inspection of care.**~~

~~(A) There will be an on-site inspection of care of each psychiatric facility that provides care to recipients which will be performed by the OHCA or its designated agent. The Oklahoma Health Care Authority will designate the members of the Inspection of Care team. This team will consist of a Licensed Mental Health Professional, a Registered Record Administrator, and a Registered Nurse. At the team's discretion, an additional Mental Health Professional may be substituted for the Registered Record Administrator. The inspection will include observation and contact with recipients. The Inspection of Care Review will consist of recipients present or listed as facility residents at the beginning of the Inspection of Care visit as well as recipients on which claims have been filed with OHCA for acute or RTC levels of care. The review includes validation of certain factors, all of which must be met for the Medicaid Services to be compensable. Following the on-site inspection, the Inspection of Care Team will report its findings to the facility. The facility will be provided with written notification if the findings of the inspection of care have resulted in any deficiencies. Deficiencies may result in a monetary penalty, (partial per diem) or a total (full per diem) recoupment of the compensation received. If the review findings have resulted in a penalty status, a penalty (partial per diem) of $50.00 per event and the days of service involved will be reported in the notification. If the review findings have resulted in full (full per diem) recoupment status, the non-compensable days of services will be reported in the notification. In the case of non-compensable days (full per diem) or penalties (partial per diem) the facility will be required to refund the amount.~~

~~(B) Penalties or non-compensable days which are the result of the facility's failure to appropriately provide and document the services described herein, or adhere to applicable accreditation, certification, and/or state licensing standards, are not Medicaid compensable or billable to the patient or the patient's family.~~

~~(C) If a denial decision is made, a reconsideration request may be made directly to the OHCA designated agent within 10 working days of notification of the denial. The agent will return a decision within 10 working days from the time of receiving the reconsideration request. If the denial decision is up-held, the denial can be appealed to the Oklahoma Health Care Authority within 20 working days of notification of the denial by the OHCA designated agent.~~

317:30-5-95.3. Medicare eligible individuals [REVOKED]

~~Payment is made to hospitals for services to Medicare eligible individuals as set forth in this section. Payment is not made to freestanding psychiatric hospitals for inpatient coinsurance and/or deductible for individuals between 21 and 65 years of age.~~

~~(1) **Individuals eligible for part A and part B.**~~

~~(A) Payment is made utilizing the Medicaid allowable for comparable Part B services.~~

~~(B) Payment is made for the inpatient deductible for Part A services for categorically needy individuals under the age of 21 or age 65 and over.~~

~~(2) **Individuals who are not eligible for part A services.** For individuals who have exhausted Medicare Part A benefits, claims must be accompanied by a statement from the Medicare Part A intermediary showing the date benefits were exhausted.~~

317:30-5-95.4. Individual plan of care for adults ages 21 to 64

(a) Before admission to a psychiatric hospital or immediately after admission, the attending physician or staff physician must establish a written plan of care for each applicant or recipient age 21 to 64. The plan of care must include:

(1) Diagnoses, symptoms, complaints, and complications indicating the need for admission;

(2) A description of the functional level of the individual;

(3) Objectives;

(4) Any order for medication, treatments, restorative and rehabilitative services, activities, therapies, social services, diet and special procedures recommended for the health and safety of the patient;

(5) Plans for continuing care, including review and modification to the plan of care; and

(6) Plans for discharge.

(b) The attending or staff physician and other treatment team personnel involved in the recipient's care must review each plan of care at least every seven days.

(c) All plans of care and plan of care reviews must be clearly identified as such in the patient's medical records. All must be signed and dated by the physician, RN, MHP, patient, and other treatment team members that provide individual, family and group therapy in the required review interval. If the patient has designated an advocate, the advocate's signature is also required on all plans of care and plan of care reviews.

(d) The plan of care must document appropriate patient participation in the development and implementation of the treatment plan.

317:30-5-95.5. Physician review of prescribed medications for adults age 21 to 64

All prescribed medications for adults age 21 to 64 must be reviewed by the physician at least every seven days; the review must be documented in the patient's medical record by the physician signing his/her name and title and dating the orders.

317:30-5-95.6. Medical, psychiatric and social evaluations for adults age 21 to 64

The record for an adult patient age 21 to 64 must contain complete medical, psychiatric and social evaluations.

(1) The evaluations must be completed as follows:

(A) History and Physical must be completed within 48 hours of admission by a licensed independent practitioner [M.D., D.O., Advanced Practice Nurse (A.P.N.), or Physician Assistant (P.A.)].

(B) Psychiatric Evaluation must be completed within 48 hours of admission by a M.D. or D.O.

(C) Psychosocial Evaluation must be completed within 72 hours of admission by a licensed independent practitioner (M.D., D.O., A.P.N., or P.A.) or a mental health professional as defined in OAC 317:30-5-240(c).

(2) The evaluations must be clearly identified as such and must be signed and dated by the evaluator.

317:30-5-95.7. Active treatment for adults age 21 to 64

Active treatment must be provided to each adult patient age 21 to 64. The active treatment program must be appropriate to the needs of the patient and be directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

317:30-5-95.8. Nursing services for adults age 21 to 64

Each facility providing nursing services to adults age 21 to 64 must have a qualified Director of Psychiatric Nursing. In addition to the Director of Nursing, there must be adequate numbers of registered nurses, licensed practical nurses, and mental health workers to provide nursing care necessary under the active treatment program and to maintain progress notes on each patient. A registered nurse must document patient progress at least weekly. The progress notes must contain recommendations for revisions in the treatment plan, as needed, as well as an assessment of the patient's progress as it relates to the treatment plan goals and objectives.

317:30-5-95.9. Therapeutic services for adults age 21 to 64

An interdisciplinary team of a physician, mental health professional(s), registered nurse, and other staff who provide services to adult patients age 21 to 64 in the facility oversee all components of the active treatment and provide services appropriate to their respective discipline. The team developing the individual plan of care must include, at a minimum, the following:

(1) Allopathic or Osteopathic Physician with a current license and a board certification/eligible in psychiatry, or a current resident in psychiatry practicing as described in OAC 317:30-5-2(a)(1)(U); and

(2) a mental health professional licensed to practice by one of the following boards:

(A) Psychology (health service specialty only);

(B) Social Work (clinical specialty only);

(C) Licensed Professional Counselor;

(D) Licensed Behavioral Practitioner;

(E) Licensed Marital and Family Therapist; or

(F) Advanced Practice Nurse (certified in a psychiatric mental health specialty, licensed as a registered nurse with a current certification of recognition from the Board of Nursing in the state in which the services are provided); and

(3) a registered nurse with a minimum of two years of experience in a mental health treatment setting.

317:30-5-95.10. Discharge plan for adults age 21 to 64

Each adult patient age 21 to 64 must have a discharge plan that includes a recapitulation of the patient's hospitalization, recommendations for follow-up and aftercare to include referral to medication management, out-patient behavioral health counseling and/or case management to include the specific appointment information (time, dae and name, address and telephone number of provider and related community services), and a summary of the patient's condition at discharge. All discharge and aftercare plans must be documented in the patient's medical records.

317:30-5-95.11. Inpatient acute psychiatric services for persons over 65 years of age

Payment is made for medically necessary inpatient acute psychiatric services, including free-standing psychiatric facilities, for persons over 65 years of age. OHCA rules that apply to inpatient acute psychiatric coverage for persons over 65 years of age are found in Sections OAC 317:30-5-95.12 through 317:30-5-95.21.

317:30-5-95.12. Utilization control requirements for inpatient acute psychiatric services for persons over 65 years of age

Federal regulations require that medical records include the factors which must be met for the Medicaid services to be compensable (Reference 42 CFR 456.150).

317:30-5-95.13. Certification and recertification of need for inpatient care for inpatient acute psychiatric services for persons over 65 years of age

The certification and recertification of need for inpatient care for persons over 65 years of age must be in writing and must be signed and dated by the physician who has knowledge of the case and the need for continued inpatient psychiatric care. The certification and recertification documents for all Medicaid patients must be maintained in the patient's medical records or in a central file at the facility where the patient is or was a resident.

(1) **Certification.** A physician must certify for each applicant or recipient that inpatient services in a psychiatric hospital are or were needed. The certification must be made at the time of admission or, if an individual applies for assistance while in a psychiatric hospital, before the Medicaid agency authorizes payment.

(2) **Recertification.** A physician must recertify for each applicant or recipient that inpatient services in the psychiatric hospital are needed. Recertification must be made at least every 60 days after certification.

317:30-5-14. Individual plan of care for persons over 65 years of age receiving inpatient acute psychiatric services

(a) Before admission to a psychiatric hospital or immediately after admission, the attending physician or staff physician must establish a written plan of care for each applicant or recipient. The plan of care must include:

(1) Diagnoses, symptoms, complaints, and complications indicating the need for admission;

(2) A description of the functional level of the individual;

(3) Objectives;

(4) Any order for medication, treatments, restorative and rehabilitative services, activities, therapies, social services, diet and special procedures recommended for the health and safety of the patient;

(5) Plans for continuing care, including review and modification to the plan of care, and

(6) Plans for discharge.

(b) The attending or staff physician and other treatment team personnel involved in the recipient's care must review each plan of care at least every seven days.

(c) All plans of care and plan of care reviews must be clearly identified as such in the patient's medical records. All must be signed and dated by the physician, RN, MHP, patient and other treatment team members that provide individual, family and group therapy in the required review interval. If the patient has designated an advocate, the advocate's signature is also required on all plans of care and plan of care reviews.

(d) The plan of care must document appropriate patient participation in the development and implementation of the treatment plan.

317:30-5-95.15. Physician review of prescribed medications for persons over 65 years of age receiving inpatient acute psychiatric services

All prescribed medications for persons over 65 years of age receiving inpatient acute psychiatric services must be reviewed by the physician at least every seven days; the review must be documented in the patient's medical record by the physician signing his/her name and title and dating the orders.

317:30-5-95.16. Medical psychiatric and social evaluations for persons over 65 years of age receiving inpatient acute psychiatric services

The record of a patient over 65 years of age receiving inpatient acute psychiatric services must contain complete medical, psychiatric and social evaluations.

(1) The evaluations must be completed as follows:

(A) History and Physical must be completed within 48 hours of admission by a licensed independent practitioner [M.D., D.O., Advanced Practice Nurse (A.P.N.), or Physician Assistant (P.A.)].

(B) Psychiatric Evaluation must be completed within 48 hours of admission by a M.D. or D.O.

(C) Psychosocial Evaluation must be completed within 72 hours of admission by a licensed independent practitioner (M.D., D.O., A.P.N., or P.A.) or a mental health professional as defined in OAC 317:30-5-240(c).

(2) The evaluations must be clearly identified as such and must be signed and dated by the evaluator.

317:30-5-95.17. Active treatment for persons over 65 years of age receiving inpatient acute psychiatric services

Active treatment must be provided to each patient over 65 years of age who is receiving inpatient acute psychiatric services. The active treatment program must be appropriate to the needs of the patient and be directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

317:30-5-95.18. Nursing services for persons over 65 years of age receiving inpatient acute psychiatric services

Each facility providing inpatient acute psychiatric services to adults over 65 must have a qualified Director of Psychiatric Nursing. In addition to the Director of Nursing, there must be adequate numbers of registered nurses, licensed practical nurses, and mental health workers to provide nursing care necessary under the active treatment program and to maintain progress notes on each patient. A registered nurse must document patient progress at least weekly. The progress notes must contain recommendations for revisions in the treatment plan, as needed, as well as an assessment of the patient's progress as it relates to the treatment plan goals and objectives.

317:30-5-95.19. Therapeutic services for persons over 65 years of age receiving inpatient acute psychiatric services

An interdisciplinary team of a physician, mental health professional(s), registered nurse, and other staff who provide services to patients over 65 years of age who are receiving inpatient acute psychiatric services in the facility oversee all components of the active treatment and provide services appropriate to their respective discipline. The team developing the individual plan of care must include, at a minimum, the following:

(1) Allopathic or Osteopathic Physician with a current license and a board certification/eligible in psychiatry, or a current resident in psychiatry practicing as described in OAC 317:30-5-2(a)(1)(U); and

(2) a mental health professional licensed to practice by one of the following boards:

(A) Psychology (health service specialty only);

(B) Social Work (clinical specialty only);

(C) Licensed Professional Counselor;

(D) Licensed Behavioral Practitioner;

(E) Licensed Marital and Family Therapist; or

(F) Advanced Practice Nurse (certified in a psychiatric mental health specialty, licensed as a registered nurse with a current certification of recognition from the Board of Nursing in the state in which the services are provided); and

(3) a registered nurse with a minimum of two years of experience in a mental health treatment setting.

317:30-5-95.20. Discharge plan for persons over 65 years of age receiving inpatient acute psychiatric services

Each patient over 65 years of age receiving inpatient acute psychiatric services must have a discharge plan that includes a recapitulation of the patient's hospitalization, recommendations for follow-up and aftercare to include referral to medication management, out-patient behavioral health counseling and/or case management to include the specific appointment information (time, date and name, address and telephone number of provider and related community services), and a summary of the patient's condition at discharge. All discharge and aftercare plans must be documented in the patient's medical records.

317:30-5-95.21. Continued stay review for persons over 65 years of age receiving inpatient acute psychiatric services

The facility must complete a continued stay review at least every 90 days each time the facility utilization review committee determines that the continued inpatient psychiatric hospital stay is required for persons over 65 years of age.

(1) The methods and criteria for continued stay review must be contained in the facility utilization review plan.

(2) Documentation of the continued stay review must be clearly identified as such, signed and dated by the committee chairperson, and must clearly state the continued stay dates and time period approved.

317:30-5-95.22. Coverage for children

(a) In order for services to be covered, services in acute hospitals, free-standing hospitals, and Psychiatric Residential Treatment Facilities must meet the requirements in OAC 317:30-5-95.25 through 317:30-5-95.30. OHCA rules that apply to inpatient psychiatric coverage for children are found in Sections OAC 317:30-5-95.24 through 317:30-5-95.42.

(b) **Definitions.** The following words and terms, when used in Sections OAC 317:30-5-95.22 through 317:30-5-95.42, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Acute care"** means care delivered in a psychiatric unit of a general hospital or free-standing psychiatric hospital that provides assessment, medical management and monitoring, and short-term intensive treatment and stabilization to individuals experiencing acute episodes of behavioral health disorders.

(2) **"Border Placement"** means a placement in a facility that is in one of the states that borders Oklahoma (Arkansas, Colorado, Kansas, Missouri, New Mexico, and Texas). Border "status" may include other states that routinely provide PRTF services. Providers are subject to the same OHCA rules and program requirements as in-state providers, including claims submission procedures and are paid the same daily per diem as Oklahoma providers.

(3) **"Chemical Dependency/Substance Abuse services/Detoxification"** means services offered to individuals with a substance-related disorder whose biomedical and emotional/behavioral problems are sufficiently severe to require inpatient care.

(4) **"Designated Agent"** means the entity contracted with OHCA to provide certain services to meet federal and state statutory obligations of the OHCA.

(5) **"Enhanced Treatment Unit"** means an intensive residential treatment unit that provides a program of care to a population with a special need or issues requiring increased staffing requirements, co-morbidities and longer lengths of stay.

(6) **"Out-of-State Placement"** means a placement for intensive or specialized services not available in Oklahoma requiring additional authorization procedures and approval by the OHCA Behavioral Health Unit.

(7) **"Residential Treatment services"** means psychiatric services that are designed to serve children who need longer-term, more intensive treatment, and a more highly structured environment than they can receive in family and other community-based alternatives to hospitalization.

317:30-5-95.23. Individuals age 21

Individuals eligible for Oklahoma Medicaid may be covered for inpatient psychiatric services before the recipient

reaches age 21 or, if the recipient was receiving inpatient psychiatric services at the time he or she reached age 21. Services may continue until the recipient no longer requires the services or the recipient becomes 22 years of age, whichever comes first. Sections OAC 317:30-5-95.24 through 317:30-5-95.42 apply to coverage for inpatient services in acute care hospitals, freestanding psychiatric hospitals, and PRTFs.

317:30-5-95.24. Pre-authorization of inpatient psychiatric services for children

All inpatient psychiatric services for patients under 21 years of age must be prior authorized by an agent designated by the Oklahoma Health Care Authority. All inpatient acute and residential psychiatric services will be prior authorized for an approved length of stay. Additional steps are required for a placement approval on enhanced treatment units or in special population programs. Non-authorized inpatient psychiatric services will not be Medicaid compensable.

(1) **Length of stay.** The designated agent will prior authorize all services for an approved length of stay based on the medical necessity criteria described in OAC 317:30-5-95.25 through 317:30-5-95.31.

(2) **Facility placements.** Out of state placements must be approved by the agent designated by the OHCA and subsequently approved by the OHCA Medicaid, Medical Services Behavioral Health Division. Requests for admission to Psychiatric Residential Treatment Facilities or acute care units will be reviewed for consideration of level of care, availability, suitability, and proximity of suitable services. A prime consideration for placements will be proximity to the family or guardian in order to involve the family or guardian in Active Treatment, including discharge and reintegration planning. Out of state facilities are responsible for insuring appropriate medical care as needed under Oklahoma Medicaid provisions as part of the per-diem rate. Out of state facilities are responsible for insuring appropriate medical care as needed under Oklahoma Medicaid provisions as part of the per-diem rate.

(3) **Service limitations.** Inpatient psychiatric services in all acute hospitals and psychiatric residential treatment facilities are limited to the approved length of stay. The Agent designated by the OHCA will approve lengths of stay using the current OHCA Behavioral Health medical necessity criteria and following the current inpatient provider manual approved by the OHCA. The approved length of stay applies to both hospital and physician services.

317:30-5-95.25. Medical necessity criteria for acute psychiatric admissions for children

Acute psychiatric admissions for children 13 or older must meet the terms and conditions contained in (1), (2), (3), (4) and two of the terms and conditions in (5)(A) to (6)(C) of this subsection. Acute psychiatric admissions for children 12 or younger must meet the terms or conditions contained in (1), (2), (3), (4) and one of (5)(A) to (5)(D), and one of (6)(A) to (6)(C) of this subsection.

(1) Any DSM-IV-TR Axis I primary diagnosis with the exception of V-codes, adjustment disorders, and substance related disorders, accompanied by a detailed description of the symptoms supporting the diagnosis. In lieu of a qualifying Axis I diagnosis, children 18-21 years of age may have an Axis II diagnosis of any personality disorder.

(2) Conditions are directly attributable to a mental disorder as the primary need for professional attention (this does not include placement issues, criminal behavior, status offenses). Adjustment or substance related disorder may be a secondary Axis I diagnosis.

(3) It has been determined by the OHCA designated agent that the current disabling symptoms could not have been managed or have not been manageable in a lesser intensive treatment program.

(4) Child must be medically stable.

(5) Within the past 48 hours, the behaviors present an imminent life threatening emergency such as evidenced by:

(A) Specifically described suicide attempts, suicide intent, or serious threat by the patient.

(B) Specifically described patterns of escalating incidents of self-mutilating behaviors.

(C) Specifically described episodes of unprovoked significant physical aggression and patterns of escalating physical aggression in intensity and duration.

(D) Specifically described episodes of incapacitating depression or psychosis that result in an inability to function or care for basic needs.

(6) Requires secure 24-hour nursing/medical supervision as evidenced by:

(A) Stabilization of acute psychiatric symptoms.

(B) Needs extensive treatment under physician direction.

(C) Physiological evidence or expectation of withdrawal symptoms which require 24-hour medical supervision.

317:30-5-95.26. Medical necessity criteria for continued stay - acute psychiatric admission for children

Continued stay - acute psychiatric admissions for children must meet all of the conditions set forth in (1) to (4) of this subsection.

(1) Any DSM-IV-TR Axis I primary diagnosis with the exception of V-Codes, adjustment disorders, and substance abuse related disorders, accompanied by a detailed description of the symptoms supporting the diagnosis. In lieu of a qualifying Axis I diagnosis, children 18-20 years of age may have an Axis II diagnosis of any personality disorder. Adjustment or substance related disorders may be a secondary Axis I diagnosis.

(2) Patient continues to manifest a severity of illness that requires an acute level of care as defined in the admission criteria and which could not be provided in a less restrictive setting.

(A) Documentation of regression is measured in behavioral terms.

(B) If condition is unchanged, evidence of re-evaluation of treatment objectives and therapeutic interventions.

(3) Conditions are directly attributable to a mental disorder as the primary need for professional attention (this does not include placement issues, criminal behavior, status offenses).

(4) Documented efforts of working with child's family, legal guardians and/or custodians and other human service agencies toward a tentative discharge date.

317:30-5-95.27. Medical necessity criteria for admission - inpatient chemical dependency detoxification for children

Inpatient chemical dependency detoxification admissions for children must meet the terms and conditions contained in (1), (2), (3), and one of (4)(A) through (D) of this subsection.

(1) Any psychoactive substance dependency disorder described in DSM-IV-TR with detailed symptoms supporting the diagnosis and need for medical detoxification, except for cannabis, nicotine, or caffeine dependencies.

(2) Conditions are directly attributable to a substance dependency disorder as the primary need for professional attention (this does not include placement issues, criminal behavior, status offenses).

(3) It has been determined by the OHCA designated agent that the current disabling symptoms could not be managed or have not been manageable in a lesser intensive treatment program.

(4) Requires secure 24-hour nursing/medical supervision as evidenced by:

(A) Need for active and aggressive pharmacological interventions.

(B) Need for stabilization of acute psychiatric symptoms.

(C) Need extensive treatment under physician direction.

(D) Physiological evidence or expectation of withdrawal symptoms which require 24-hour medical supervision.

317:30-5-95.28. Medical necessity criteria for continued stay - inpatient chemical dependency detoxification program for children

Authorization for admission to a chemical dependency detoxification program is limited to up to five days. Exceptions to this limit may be made up to seven to eight days based on a case-by-case review.

317:30-5-95.29. Medical necessity criteria for admission - psychiatric residential treatment for children

Psychiatric Residential Treatment facility admissions for children must meet the terms and conditions in (1) to (4) and one of the (5)(A) through (5)(D), and one of (6)(A) through (6)(C) of this subsection.

(1) Any DSM-IV-TR Axis I primary diagnosis with the exception of V-codes, adjustment disorders, and substance related disorders, accompanied by detailed symptoms supporting the diagnosis. In lieu of a qualifying Axis I diagnosis, children 18-20 years of age may have an Axis II diagnosis of any personality disorder. Adjustment or substance related disorders may be a secondary Axis I diagnosis.

(2) Conditions are directly attributed to a mental disorder as the primary reason for professional attention (this does not include placement issues, criminal behavior, status offenses).

(3) Patient has either received treatment in an acute care setting or it has been determined by the OHCA designated agent that the current disabling symptoms could not or have not been manageable in a less intensive treatment program.

(4) Child must be medically stable.

(5) Patient demonstrates escalating pattern of self injurious or assaultive behaviors as evidenced by:

(A) suicidal ideation and/or threat.

(B) History of or current self-injurious behavior.

(C) Serious threats or evidence of physical aggression.

(D) Current incapacitating psychosis or depression.

(6) Requires 24-hour observation and treatment as evidenced by:

(A) Intensive behavioral management.

(B) Intensive treatment with the family/guardian and child in a structured milieu.

(C) Intensive treatment in preparation for re-entry into community.

317:30-5-95.30. Medical necessity criteria for continued stay - psychiatric residential treatment center for children

For continued stay Psychiatric Residential Treatment Facilities for children, admissions must meet the terms and conditions contained in (1), (2), (5), (6), and either (3) or (4) of this subsection.

(1) Any DSM-IV-TR Axis I primary diagnosis with the exception of V codes, adjustment disorders, and substance abuse related disorders, accompanied by detailed symptoms supporting the diagnosis. In lieu of a qualifying Axis I diagnosis, children 18-20 years of age may have an Axis II diagnosis of any personality disorder.

(2) conditions are directly attributed to a mental disorder as the primary reason for continued stay (this does not include placement issues, criminal behavior, status offenses).

(3) Patient is making measurable progress toward the treatment objectives specified in the treatment plan.

(A) Progress is measured in behavioral terms and reflected in the patient's treatment and discharge plans.

(B) Patient has made gains toward social responsibility and independence.

(C) There is active, ongoing psychiatric treatment and documented progress toward the treatment objective and discharge.

(D) There are documented efforts and evidence of active involvement with the family, guardian, child welfare worker, extended family, etc.

(4) child's condition has remained unchanged or worsened.

(A) Documentation of regression is measured in behavioral terms.

(B) If condition is unchanged, there is evidence of re-evaluation of the treatment objectives and therapeutic interventions.

(5) There is documented continuing need for 24-hour observation and treatment as evidenced by:

(A) Intensive behavioral management.

(B) Intensive treatment with the family/guardian and child in a structured milieu.

(C) Intensive treatment in preparation for re-entry into community.

(6) Documented efforts of working with child's family, legal guardian and/or custodian and other human service agencies toward a tentative discharge date.

317:30-5-95.31. Pre-authorization and extension procedures for children

(a) Pre-admission authorization for inpatient psychiatric services for children must be requested from the OHCA designated agent. The OHCA or designated agent will evaluate and render a decision within 24 hours of receiving the request. A prior authorization will be issued by the OHCA or its designated agent, if the recipient meets medical necessity criteria. For the safety of Medicaid recipients, additional approval from the OHCA designated agent is required for placement on specialty units or in special population programs or for recipients with special needs such as very low intellectual functioning.

(b) Extension requests (psychiatric) must be made through the OHCA designated agent. All requests are made prior to the expiration of the approved extension following the guidelines in the Inpatient Provider Manual published by the OHCA designated agent. Requests for the continued stay of a child who has been in an acute psychiatric program for a period of 15 days and in a psychiatric residential treatment facility for 3 months will require a review of all treatment documentation completed by the OHCA designated agent to determine the efficacy of treatment.

(c) Providers seeking prior authorization will follow OHCA's designated agent's prior authorization process guidelines for submitting behavioral health case management requests on behalf of the Medicaid recipient.

(d) In the event a recipient disagrees with the decision by OHCA's designated agent, the provider receives an evidentiary hearing under OAC 317:2-1-2(a). The recipient's request for such an appeal must commence within 20 calendar days of the initial decision. Providers may access a reconsideration process by OHCA's designated agent, whose decision is final. The provider has ten business days of receipt of the decision to request the designated agent to reconsider its decision. The agent will return the decision within ten working days from the time of receiving the provider's reconsideration request. The reconsideration process will end on July 1, 2006.

317:30-5-95.32. Quality of care requirements for children

(a) At the time of admission of the child to an inpatient psychiatric program, the admitting facility will provide the patient and their family or guardian with written explanation of the facility's policy regarding the following:

(1) Patient rights.

(2) Behavior Management of patients in the care of the facility.

(3) Patient Grievance procedures.

(4) Information for contact with the Office of Client Advocacy.

(5) Seclusion and Restraint policy.

(b) At the time of admission to an inpatient psychiatric program, the admitting facility will provide the patient and their family or guardian with the guidelines for the conditions of family or guardian participation in the treatment of their child. The written Conditions of Participation are provided for the facility by the Oklahoma Health Care Authority. These guidelines specify the conditions of the family or guardian's participation in "Active Treatment". The signature of the family member or guardian acknowledges their understanding of the conditions of their participation in "Active Treatment" while the patient remains in the care of the facility. The conditions include provisions of participation required for the continued Medicaid compensable treatment. Patients 18 and over are exempt from the family participation requirement. Families of patients that have been placed out of state for behavioral health treatment may not be able to attend family therapy each week but should remain active in the patient's treatment by telephone and attendance for family therapy at least once a month.

317:30-5-95.33. Individual plan of care for children

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

(1) "Mental Health Professional (MHP)" means licensed psychologists, licensed clinical social workers (LCSW), licensed marital and family therapists (LMFT), licensed professional counselors (LPC), licensed behavioral practitioners (LBP), and advanced practice nurses (APN).

(2) "Individual plan of Care" means a written plan developed for each recipient within four calendar days of any admission to a PRTF and is the document that directs the care and treatment of a patient. The individual plan of care includes:

(A) the complete record of the DSM-IV-TR five-axis diagnosis, including the corresponding symptoms, complaints, and complications indicating the need for admission;

(B) the current functional level of the individual;

(C) treatment goals and measurable time limited objectives;

(D) any orders for psychotropic medications, treatments, restorative and rehabilitative services, activities, therapies, social services, diet and special procedures recommended for the health and safety of the patient;

(E) plans for continuing care, including review and modification to the plan of care; and

(F) plan for discharge, all of which is developed to improve the child's condition to the extent that the inpatient care is no longer necessary.

(b) The individual plan of care:

(1) must be based on a diagnostic evaluation that includes examination of the medical, psychological, social, behavioral and developmental aspects of the individual patient and reflects the need for inpatient psychiatric care;

(2) must be developed by a team of professionals as specified in OAC 317:30-5-95.35 in collaboration with the recipient, and his/her parents for patients under the age of 18, legal guardians, or others in whose care he/she will be released after discharge;

(3) must establish treatment goals that are general outcome statements and reflective of informed choices of the patient served. Additionally, the treatment goal must be appropriate to the patient's age, culture, strengths, needs, abilities, preferences and limitations;

(4) must establish measurable and time limited treatment objectives that reflect the expectations of the patient served and parent/legal guardian (when applicable) as well as being age, developmentally and culturally appropriate. When modifications are being made to accommodate age, developmental level or a cultural issue, the documentation must be reflected on the individual plan of care. The treatment objectives must be achievable and understandable to the patient and the parent/guardian (when applicable). The treatment objectives also must be appropriate to the treatment setting and list the frequency of the service;

(5) must prescribe an integrated program of therapies, activities and experiences designed to meet the objectives;

(6) must include specific discharge and after care plans that are appropriate to the patient's needs and effective on the day of discharge. At the time of discharge, after care plans will include referral to medication management, out-patient behavioral health counseling and case management to include the specific appointment date(s), names and addresses of service provider(s) and related community services to ensure continuity of care and reintegration for the recipient into their family school, and community;

(7) must be reviewed at least every seven calendar days when in acute care and a regular PRTF and every 14 calendar days in specialty PRTF treatment programs by the team specified to determine that services are being appropriately provided and to recommend changes in the individual plan of care as indicated by the recipient's overall adjustment, progress, symptoms, behavior, and response to treatment;

(8) development and review must satisfy the utilization control requirements for physician re-certification and establishment of periodic reviews of the individual plan of care; and,

(9) each individual plan of care review must be clearly identified as such and be signed and dated individually by the physician, licensed mental health professional, patient, parent/guardian (for patients under the age of 18), registered nurse, and other required team members. Individual plans of care and individual plan of care reviews are not valid until completed and appropriately signed and dated. All requirements for the individual plan of care or individual plan of care reviews must be met or a partial per diem recoupment will be merited. In those instances where it is necessary to fax an Individual Plan of Care or Individual Plan of Care review to a parent or OKDHS/OJA worker for review, the parent and/or OKDHS/OJA worker may fax back their signature. The Provider must obtain the original signature for the clinical file within 30 days. Stamped or Xeroxed signatures are not allowed for any parent or member of the treatment team.

317:30-5-95.34. Active treatment for children

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

(1) "Expressive group therapy" means art, music, dance, movement, poetry, drama, psychodrama, structured therapeutic physical activities, experiential (ROPES), recreational, or occupational therapies that encourage the patient to express themselves emotionally and psychologically.

(2) "Family therapy" means interaction between a MHP, patient and family member(s) to facilitate emotional, psychological or behavioral changes and promote successful communication and understanding.

(3) "Group rehabilitative treatment" means behavioral health remedial services, as specified in the individual care plan which are necessary for the treatment of the existing primary behavioral health disorders and/or any secondary alcohol and other drug (AOD) disorders in order to increase the skills necessary to perform activities of daily living.

(4) "Individual rehabilitative treatment" means a face to face, one on one interaction which is performed to assist patients who are experiencing significant functional impairment due to the existing primary behavioral health disorder and/or any secondary AOD disorder in order to increase the skills necessary to perform activities of daily living.

(5) "Individual therapy" means a method of treating existing primary behavioral health disorders and/or any secondary AOD disorders using face to face, one on one interaction between a MHP and a patient to promote emotional or psychological change to alleviate disorders.

(6) "Process group therapy" means a method of treating existing primary behavioral health disorders and/or secondary AOD disorders using the interaction between a

MHP as defined in OAC 317:30-5-240(c), and two or more patients to promote positive emotional and/or behavioral change.

(b) Inpatient psychiatric programs must provide "Active Treatment". Active Treatment involves the patient and their family or guardian from the time of an admission throughout the treatment and discharge process. For individuals in the age range of 18 up to 21, it is understood that family members and guardians will not always be involved in the patient's treatment. Active Treatment also includes an ongoing program of assessment, diagnosis, intervention, evaluation of care and treatment, and planning for discharge and aftercare under the direction of a physician.

(c) The components of Active Treatment consist of integrated therapies that are provided on a regular basis and will remain consistent with the patient's ongoing need for care. Sixty minutes is the expectation to equal one hour of treatment. The following components meet the minimum standards required for Active Treatment, although an individual child's needs for treatment may exceed this minimum standard:

(1) Individual treatment provided by the physician. Individual treatment provided by the physician is required three times per week for acute care and one time a week in Residential Treatment Facilities. Individual treatment provided by the physician will never exceed 10 days between sessions in PRTFs. Individual treatment provided by the physician may consist of therapy or medication management intervention for acute and residential programs.

(2) Individual therapy. MHPs performing this service must use and document an approach to treatment such as cognitive behavioral treatment, narrative therapy, solution focused brief therapy or another widely accepted theoretical framework for treatment. Ongoing assessment of the patient's status and response to treatment as well as psycho-educational intervention are appropriate components of individual therapy. Individual therapy must be provided in a confidential setting. The therapy must be goal directed utilizing techniques appropriate to the individual patient's plan of care and the patient's developmental and cognitive abilities. Individual therapy must be provided two hours per week in acute care and one hour per week in residential treatment by a mental health professional as described in OAC 317:30-5-240(c). One hour of family therapy may be substituted for one hour of individual therapy at the treatment team's discretion.

(3) Family therapy. The focus of family therapy must be directly related to the goals and objectives on the individual patient's plan of care. Family therapy must be provided one hour per week for acute care and residential treatment for patients under the age of 18. One hour of individual therapy addressing relevant family issues may be substituted for a family session in an instance in which the family is unable to attend a scheduled session by a mental health professional as described in OAC 317:30-5-240(c).

(4) Process group therapy. The focus of process group therapy must be directly related to goals and objectives on the individual patient's plan of care. The individual patient's behavior and the focus of the group must be included in each patient's medical record. This service does not include social skills development or daily living skills activities and must take place in an appropriate confidential setting, limited to the therapist, appropriate hospital staff, and group members. Group therapy must be provided three hours per week in acute care and two hours per week in residential treatment by a mental health professional as defined in OAC 317:30-5-240(c). In lieu of one hour of process group therapy, one hour of expressive group therapy may be substituted.

(5) Expressive group therapy. Through active expression, inner-strengths are discovered that can help the patient deal with past experiences and cope with present life situations in more beneficial ways. The focus of the group must be directly related to goals and objectives on the individual patient's plan of care. Documentation must include how the patient is processing emotions/feelings. Expressive therapy must be a planned therapeutic activity, facilitated by staff with a relevant Bachelor's degree and/or staff with relevant training, experience, or certification to facilitate the therapy. Expressive group therapy must be provided four hours per week in acute care and three hours per week in residential treatment. In lieu of one hour of expressive group therapy, one hour of process group therapy may be substituted.

(6) Group Rehabilitative treatment. Examples of educational and supportive services, which may be covered under the definition of group rehabilitative treatment services, are basic living skills, social skills (re)development, interdependent living, self-care, lifestyle changes and recovery principles. Each service provided under group rehabilitative treatment services must have goals and objectives, directly related to the individual plan of care. Group rehabilitative treatment services will be provided two hours each day for all inpatient psychiatric care. In lieu of two hours of group rehabilitative services per day, one hour of individual rehabilitative services per day may be substituted.

(7) Individual rehabilitative treatment. Services will be for the reduction of psychiatric and behavioral impairment and the restoration of functioning consistent with the requirements of independent living and enhanced self-sufficiency. This service includes educational and supportive services regarding independent living, self-care, social skills (re)development, lifestyle changes and recovery principles and practices. Each individual rehabilitative treatment service provided must have goals and objectives directly related to the individualized plan of care and the patient's diagnosis. One hour of individual rehabilitative treatment service may be substituted daily for the two hour daily group rehabilitative services requirement.

(8) Modifications to active treatment. When a patient is too physically ill or their acuity level precludes them from active behavioral health treatment, documentation must demonstrate that alternative clinically appropriate services were provided.

317:30-5-95.35. Credentialing requirements for treatment team members for children

(a) The team developing the individual plan of care for the child must include, at a minimum, the following:

(1) Allopathic or Osteopathic Physician with a current license and a board certification/eligible in psychiatry, or a current resident in psychiatry practicing as described in OAC 317:30-5-2(a)(1)(U), and

(2) a mental health professional licensed to practice by one of the following boards: Psychology (health service specialty only); Social Work (clinical specialty only); Licensed Professional Counselor, Licensed Behavioral Practitioner, (or) Licensed Marital and Family Therapist or Advanced Practice Nurse (certified in a psychiatric mental health specialty, licensed as a registered nurse with a current certification of recognition from the Board of Nursing in the state in which the services are provided), and

(3) a registered nurse with a minimum of two years of experience in a mental health treatment setting.

(b) Candidates for licensure for Licensed Professional Counselor, Social Work (clinical specialty only), Licensed Marital and Family Therapist, Licensed Behavioral Practitioner and Psychology (health services specialty only) can provide individual therapy, family therapy and process group therapy as long as they are involved in the supervision that complies with their respective approved licensing regulations and the Department of Health and their work must be co-signed by a licensed MHP who is additionally a member on the treatment team. Individuals who have met their supervision requirements and are waiting to be licensed by one of the licensing boards in OAC 317:30-5-95.35(a)(1) must have their work co-signed by a licensed MHP who is additionally a member on the treatment team.

(c) Services provided by treatment team members not meeting the above credentialing requirements are not Medicaid compensable and can not be billed to the Medicaid recipient.

317:30-5-95.36. Treatment team for inpatient children's services

An interdisciplinary team of a physician, mental health professionals, registered nurse, patient, parent/legal guardian for patients under the age of 18, and other personnel who provide services to patients in the facility must develop the individual plan of care, oversee all components of the active treatment and provide the services appropriate to their respective discipline. Based on education and experience, preferably including competence in child psychiatry, the teams must be capable of:

(1) Assessing the recipient's immediate and long range therapeutic needs, developmental priorities and personal strengths and liabilities;

(2) Assessing the potential resources of the recipient's family, and actively involving the family of patients under the age of 18 in the ongoing plan of care;

(3) Setting treatment objectives;

(4) Prescribing therapeutic modalities to achieve the plan objectives; and

(5) Developing appropriate discharge criteria and plans.

317:30-5-95.37. Medical, psychiatric and social evaluations for inpatient services for children

The patient's medical record must contain complete medical, psychiatric and social evaluations.

(1) These evaluations are considered critical documents to the integrity of care and treatment and must be completed as follows:

(A) History and physical evaluation must be completed within 48 hours of admission by a licensed independent practitioner (M.D., D.O., A.P.N., or P.A.).

(B) Psychiatric evaluation must be completed within 60 hours of admission by a M.D. or D.O.

(C) Psychosocial evaluation must be completed within 72 hours of an acute admission and within seven days of admission to a PRTF by a licensed independent practitioner (M.D., D.O., A.P.N., or P.A.) or a mental health professional as defined in OAC 317:30-5-240(c).

(2) Each of the evaluations must be clearly identified as such and must be signed and dated by the evaluators.

(3) Each of the evaluations must be completed when the patient changes levels of care if the existing evaluation is more than 30 days from admission. Evaluations remain current for 12 months from the date of admission and must be updated annually within seven days of that anniversary date.

(4) The history and physical evaluation, psychiatric evaluation and psychosocial evaluation must be completed within the time lines designated in this section or those days will be rendered non-compensable for Medicaid until completed.

317:30-5-95.38. Nursing services for children (inpatient psychiatric acute only)

Each facility must have a qualified Director of Psychiatric Nursing. In addition to the Director of Nursing, there must be adequate numbers of registered nurses, licensed practical nurses, and mental health workers to provide nursing care necessary under the active treatment program and to maintain progress notes on each patient. A registered nurse must document patient progress at least weekly. The progress note must contain recommendations for revisions in the individual plan of care, as needed, as well as an assessment of the patient's progress as it relates to the individual plan of care goals and objectives.

317:30-5-95.39. Seclusion, restraint, and serious incident reporting requirements for children

The process by which a facility is required to inform the OHCA of a death, serious injury, or suicide attempt is as follows:

(1) The hospital administrator, executive director, or designee is required to contact the OHCA Behavioral

Health Unit by phone no later than 5:00 p.m. on the business day following the incident.

(2) Information regarding the Medicaid recipient involved, the basic facts of the incident, and follow-up to date must be reported. The agency will be asked to supply, at a minimum, follow-up information with regard to patient outcome, staff debriefing and programmatic changes implemented (if applicable).

(3) Within three days, the OHCA Behavioral Health Unit must receive the above information in writing (example: Facility Critical Incident Report).

(4) Patient death must be reported to the OHCA Behavioral Health Services Unit as well as to the Centers for Medicare and Medicaid Regional office in Dallas, Texas.

(5) Compliance with seclusion and restraint reporting requirements will be verified during the onsite inspection of care (Section 5, Quality of Care), or using other methodologies.

317:30-5-95.40. Other required standards

The provider is required to maintain all programs and services according to applicable Code of Federal Regulations (CFR) requirements, JCAHO/AOA standards for Behavioral Health care, State Department of Health's Hospital Standards for Psychiatric Care, and State of Oklahoma Department of Human Services Licensing Standards for Residential Treatment Facilities. Psychiatric Residential Treatment Facilities may substitute CARF accreditation in lieu of JCAHO or AOA accreditation.

317:30-5-95.41. Documentation of records for children's inpatient services

(a) All documentation for services provided under active treatment must be documented in an individual note and reflect the content of each session provided. Individual, Family, Process Group, Expressive Group, Individual Rehabilitative and Group Rehabilitative Services documentation must include, at a minimum, the following:

(1) date;

(2) start and stop time for each session;

(3) signature of the therapist and/or staff that provided the service;

(4) credentials of the therapist;

(5) specific problem(s) addressed (problems must be identified on the plan of care);

(6) method(s) used to address problems;

(7) progress made towards goals;

(8) patient's response to the session or intervention; and

(9) any new problem(s) identified during the session.

(b) Signatures of the patient, parent/guardian for patients under the age of 18, doctor, MHP, and RN are required on the Individual Plan of Care and all plan of care reviews. The Individual Plan of Care and Plan of Care Review are not valid until signed and separately dated by the patient, parent/legal guardian for patients under the age of 18, doctor, RN, MHP, and all other requirements are met. All treatment team staff providing individual therapy, family therapy and process group therapy must sign the individual plan of care and all plan of care reviews.

317:30-5-95.42. Inspection of care of psychiatric facilities providing services to children

(a) There will be an on site Inspection of Care (IOC) of each psychiatric facility that provides care to Medicaid eligible children which will be performed by the OHCA or its designated agent. The Oklahoma Health Care Authority will designate the members of the Inspection of Care team.

(b) The IOC team will consist of one to three team members and will be comprised of Licensed Mental Health Professionals and/or Registered Nurses.

(c) The inspection will include observation and contact with recipients. The Inspection of Care Review will consist of recipients present or listed as facility residents at the beginning of the Inspection of Care visit as well as recipients on which claims have been filed with OHCA for acute or PRTF levels of care. The review includes validation of certain factors, all of which must be met for the Medicaid services to be compensable.

(d) Following the on-site inspection, the Inspection of Care Team will report its findings to the facility. The facility will be provided with written notification if the findings of the inspection of care have resulted in any deficiencies. A copy of the final report will be sent to the facility's accrediting agency.

(e) Deficiencies found during the IOC may result in a partial per-diem recoupment or a full per-diem recoupment of the compensation received. The following documents are considered to be critical to the integrity of care and treatment and must be completed within the time lines designated in OAC 317:30-5-95.37(a)(1) and 317:30-5-95.35(a)(2):

(1) History and physical evaluation;

(2) Psychiatric evaluation;

(3) Psychosocial evaluation; and

(4) Individual Plan of Care.

(f) For each day that the History and Physical evaluation, Psychiatric evaluation, Psychosocial evaluation and Individual Plan of Care are not contained within the patient's records, those days will warrant a full per-diem recoupment of the compensation received. Full per-diem recoupment will only occur for those documents.

(g) If the review findings have resulted in a partial per-diem recoupment of $50.00 per event, the days of service involved will be reported in the notification. If the review findings have resulted in full per diem recoupment status, the non-compensable days of service will be reported in the notification. In the case of non-compensable days full per diem or partial per diem, the facility will be required to refund the amount.

(h) Penalties of non-compensable days which are the result of the facility's failure to appropriately provide and document the services described herein, or adhere to applicable accreditation, certification, and/or state licensing standards, are not Medicaid compensable or billable to the patient or the patient's family.

317:30-5-96. Reimbursement for inpatient services [REVOKED]

~~(a) **Reimbursement for inpatient hospital services.** Reimbursement for inpatient hospital services is made based on a prospective per diem level of care payment system. The per diem includes all non-physician services furnished either directly or under arrangements. This does not include reimbursement for services in Residential Psychiatric Treatment Facilities.~~

~~(1) **Components.** There are three distinct payment components under this system. Total per diem reimbursement under the new reimbursement system will equal the sum of two rate components:~~

~~(A) Level of care per diem; plus~~

~~(B) Fixed capital per diem.~~

~~(2) **Level of care per diem rates.** The level of care per diem rate is payment for operating costs and movable capital costs. Hospitals with actual costs above the statewide median level of care will be limited to reimbursement of the statewide median level of care rate. The median was calculated by level of care using FY 1988 base year operating and moveable capital costs trended forward to the beginning of the third quarter FY 1991. Beginning July 1, 1993, when a hospital's actual costs are less than the statewide median level of care, 25 percent of the difference between the statewide median level of care rate and the hospital's specific level of care cost will be added to the level of care rate.~~

~~(A) **Level of care.** The only level of care is psychiatric care (Level 6). The range of primary diagnosis codes is 290 through 316.~~

~~(B) **Adjustments.** Level of care per diem rates will be reviewed periodically and adjusted as necessary through a public process.~~

~~(3) **Fixed capital per diem.**~~

~~(A) **Fixed capital per diem methodology for freestanding psychiatric hospitals.** Inpatient psychiatric hospitals fixed rate capital cost will be reimbursed using the average fixed capital cost of all Medicaid enrolled freestanding psychiatric inpatient hospitals from calendar year 1991 cost reports.~~

~~(B) **Adjustments.** The statewide fixed capital per diem average of all freestanding psychiatric hospitals will be reviewed periodically and adjusted as necessary through a public process.~~

~~(4) **Disproportionate share hospitals (DSH).**~~

~~(A) **Eligibility.** A hospital shall be deemed a disproportionate share hospital, as defined by Section 1923 of the federal Social Security Act, if the hospital's Medicaid inpatient utilization rate is at least one standard deviation above the mean Medicaid inpatient utilization rate for hospitals receiving Medicaid payments in the state or if the hospital's low-income utilization rate exceeds 25%.~~

~~(i) Eligibility for disproportionate share hospital payments will be determined annually by the OHCA before the beginning of each federal fiscal year based on cost and revenue survey data completed by the hospitals. The survey must be received by OHCA each year by April 30. The information used to complete the survey must be extracted from the hospital's financial records and fiscal year cost report ending in the most recently completed calendar year, for entities that meet the Medicare Provider designation (refer to Medicare Program Memorandum No. A-96-7 for requirements). A hospital may not include costs or revenues on the survey which are attributable to services rendered in a separately licensed/certified entity. Hospitals found to be ineligible for disproportionate share status upon audit shall be required to reimburse the Authority for any disproportionate share payment adjustments paid for the period of ineligibility.~~

~~(ii) Beyond meeting either of the tests found in (i) of this subparagraph, there are three additional requirements which are:~~

~~(I) Any hospital offering non-emergency obstetrical services must have at least two obstetricians with staff privileges who have agreed to provide services to Medicaid beneficiaries. This requirement does not apply to children's hospitals.~~

~~(II) In the case of an urban hospital, a hospital located in an MSA, an "obstetrician" is defined as any board-certified obstetrician with staff privileges who performs non-emergency obstetrical services at the hospital. In the case of a rural hospital, an "obstetrician" is defined to include any physician with staff privileges who performs non-emergency obstetrical services at the hospital.~~

~~(III) A hospital must have a Medicaid inpatient utilization rate of at least one percent.~~

~~(B) **Payment adjustment.**~~

~~(i) Beginning federal fiscal year 1993 and each year thereafter, DSH payment adjustments will be capped by the federal government. Financial participation from the federal government will not be allowed for expenditures exceeding the capped amount. Eligible DSH hospitals will be assigned to one of the three following categories:~~

~~(I) public private acute care teaching hospital which has 150 or more full time equivalent residents enrolled in approved teaching programs (using the most recently completed annual cost report) and is licensed in the state of Oklahoma. Public private hospital is a former state operated hospital that has entered into a joint operating agreement with a private hospital system;~~

~~(II) other state hospitals; or~~

~~(III) private hospitals and all out-of-state hospitals.~~

~~(ii) Payment adjustments will be made on a quarterly basis for federal fiscal year 1994 and~~

~~thereafter using the following formula that determines the hospital's annual allocation:~~

~~(I) Step 1. The Medicaid revenue and imputed revenue for charity are totaled for each hospital qualifying for disproportionate share adjustments.~~

~~(II) Step 2. A weight is assigned to each qualifying hospital by dividing each hospital's revenue total (Medicaid and charity) by the revenue total of the public-private acute care teaching hospital, which has the assigned weight of 1.0.~~

~~(III) Step 3. A weighted value is then determined for each hospital by multiplying the hospital's assigned weight by the hospital's total Medicaid and charity revenue.~~

~~(IV) Step 4. The weighted values of all hospitals qualifying for disproportionate share adjustments are totaled.~~

~~(V) Step 5. The percentage of the public-private acute care teaching hospital's weighted value is determined in relation to the weighted values of all qualifying disproportionate share hospitals.~~

~~(VI) Step 6. The weighted values of all state hospitals (except public-private acute care teaching hospital) are totaled.~~

~~(VII) Step 7. The weighted values of all private and out-of-state hospitals qualifying for disproportionate share adjustments are totaled.~~

~~(VIII) Step 8. The percentage of the total weighted values of the hospitals included in Step 6 (State hospitals except public-private acute care teaching hospital) is calculated in relation to the total weighted values (sum of Step 6 and 7) of all remaining hospitals qualifying for disproportionate share adjustment.~~

~~(IX) Step 9. The percentage of weighted values of the hospitals included in Step 7 (private hospitals and all out-of-state hospitals) is calculated in relation to the total weighted values (sum of Steps 6 and 7) of all remaining hospitals qualifying for disproportionate share adjustment.~~

~~(X) Step 10. The weighted percentages for the three hospital groups are next applied to the capped disproportionate share amount allowed by HCFA for the federal fiscal year. The amount of disproportionate share to be paid to the public-private acute care teaching hospital is determined by multiplying the state disproportionate share allotment by the weighted percentage of the public-private acute care teaching hospital. Beginning FFY 96, the weighted percentage amount to be paid will not exceed 82.82%. Payment of disproportionate share funds to public/private hospitals will be made to the public entity that is organizationally responsible for indigent care. The weighted percentage amount is then subtracted from the state disproportionate share allotment. Once the public-private acute care teaching hospital's share of the state disproportionate share allotment has been subtracted, the state hospitals' weighted percentage is applied to the remainder. Beginning FFY 96, the State hospital's weighted percentage (from VIII of this subunit) will not be less than 75.3%. The balance of the disproportionate share allotment is distributed to private hospitals and all out-of-state hospitals. Distribution of funds within each group will be made according to the relationship of each hospital's weighted value to the total weighted value of the group.~~

~~(iii) Payment adjustments to individual hospitals will be limited to 100 percent of the hospital's costs of providing services (inpatient and outpatient) to Medicaid recipients and the uninsured, net of payments received from Medicaid (other than DSH) and uninsured patients.~~

~~(5) **Out-of-state hospitals.**~~

~~(A) Out-of-state hospitals, for which the Authority has on file a fiscal year 1989 or more recent cost report, shall be reimbursed as follows:~~

~~(i) the level of care per diem rate~~

~~(ii) a fixed capital per diem~~

~~(iii) a hospital-specific per diem direct medical education rate.~~

~~(B) Hospitals, for which the Authority does not have a fiscal year 1989 or more recent cost report on file, will also receive the level of care per diem rates; however, capital and direct medical education rate components will not be reimbursed on a hospital-specific basis. Instead, these hospitals shall receive the statewide median capital per diem amount. The statewide median direct medical education per diem rate will be paid to qualifying hospitals.~~

~~(b) **Reimbursement for residential psychiatric treatment facilities.** Effective July 1, 1998, reimbursement for residential psychiatric treatment facilities is at a state-wide per diem system according to the facility category. There are two distinct payment components under this system. Total per diem reimbursement will equal a statewide median per diem operating and movable capital amount plus a statewide median per diem fixed capital amount.~~

~~(1) **In-State facilities.** The rates were calculated using peer-grouped residential treatment facility 1989 or 1990 audited cost reports. Costs were inflated to a common point in time prior to calculation of the median cost per day.~~

~~(A) **Hospital Based and Freestanding.**~~

~~(i) **Accreditation.** Hospital-Based and Freestanding facilities must be fully accredited by JCAHO, AOA, or CARF as a psychiatric facility or~~

~~program and be licensed as a residential child care facility.~~

~~(ii) **Reimbursement (Private).** The reimbursement rate is an all-inclusive per diem. The facility must furnish, either directly or under arrangements, all non-physician services, including prescribed drugs.~~

~~(iii) **Reimbursement (State Owned and Operated).** Facilities owned and operated by the State of Oklahoma will be reimbursed using either the statewide or facility specific interim rates and settled to total allowable costs as determined by analyses of the cost reports (HCFA 2552) filed with the OHCA.~~

~~(B) **Community Based.**~~

~~(i) **Accreditation.** Community based facilities must be fully accredited by JCAHO, AOA, or CARF as a psychiatric facility or program and licensed as a child placing agency.~~

~~(ii) **Reimbursement.** Payment shall be for routine per diem services, exclusive of ancillary and physician services. Ancillary and physician services are reimbursed separately on a fee for service basis.~~

~~(2) **Out-of-state facilities.**~~

~~(A) **Accreditation.** Out-of-state facilities must be fully accredited by JCAHO, AOA, or CARF as a psychiatric facility or program and be appropriately state licensed.~~

~~(B) **Reimbursement.** Facilities shall be reimbursed in the same manner as in-state residential psychiatric treatment centers. In the event comparable services cannot be purchased from an Oklahoma facility and the current payment levels are insufficient to obtain access for the recipient, OHCA may negotiate an all-inclusive per diem rate.~~

317:30-5-96.1. Cost reports [REVOKED]

~~Each hospital shall submit to the Authority its Medicare Cost Report (HCFA 2552), including Medicaid specific information (as appropriate), for the annual cost reporting period. Failure to submit the required completed cost report shall be grounds for the Authority to determine that a provider is not in compliance with its contractual requirements. The Authority shall enter into a Common Audit Agreement with a designated fiscal intermediary to audit Medicaid cost reports. Hospitals shall submit a copy of their cost reports to this designated fiscal intermediary. All payments made to providers are subject to adjustment based upon final (audited) cost report information.~~

317:30-5-96.2. Payments definitions

The following words and terms, when used in Sections OAC 317:30-5-96.3 through 317:30-5-96.7, shall have the following meaning, unless the context clearly indicates otherwise:

"Allowable costs" means costs necessary for the efficient delivery of patient care.

"Ancillary Services" means the services for which charges are customarily made in addition to routine services. Ancillary services include, but are not limited to, physical therapy, speech therapy, laboratory, radiology and prescription drugs.

"Border Status" means a placement in a state that does not border Oklahoma but agrees to the same terms and conditions of instate or border facilities.

"Community-Based extended" means a PRTF that provides an extended environment for individuals who have completed a more intense treatment program and are preparing for full transition into the community, but who are not yet ready for independent living due to unresolved clinical issues, or unmet needs for personal, social, or vocational skills, that is furnished in a large campus residential setting.

"Community-Based, transitional" means a PRTF that furnishes structured, therapeutic treatment services in the context of a family-like, small multiple resident home environment of 16 beds or less.

"Developmentally disabled child" means a child with deficits in adaptive behavior originating during the developmental period. This condition may exist concurrently with a significantly sub-average general intellectual functioning.

"Eating Disorders Programs" means acute or intensive residential behavioral, psychiatric and medical services provided in a discreet unit to individuals experiencing an eating disorder.

"Free-standing" means an entity that is not integrated with any other entity as a main provider, a department of a provider, remote location of a hospital, satellite facility, or a provider-based entity.

"Professional services" means services of a physician, psychologist or dentist legally authorized to practice medicine and/or surgery by the state in which the function is performed.

"Provider-Based PRTF" means a PRTF that is part of a larger general medical surgical main hospital, and the PRTF is treated as "provider based" under 42 CFR 413.65 and operates under the same license as the main hospital.

"Public" means a hospital or PRTF owned or operated by the state.

"Routine Services" means services that are considered routine in the freestanding PRTF setting. Routine services include, but are not limited to:

(A) room and board;
(B) treatment program components;
(C) psychiatric treatment;
(D) professional consultation;
(E) medical management;
(F) crisis intervention;
(G) transportation;
(H) rehabilitative services;
(I) case management;
(J) interpreter services (if applicable);
(K) routine health care for individuals in good physical health; and
(L) laboratory services for a substance abuse/detoxification program.

"Specialty treatment program/specialty unit" means acute or intensive residential behavioral, psychiatric and medical services that provide care to a population with a special need or issues such as developmentally disabled, mentally retarded, autistic/Asperger's, eating disorders, sexual offenders, or reactive attachment disorders. These patients require a higher level of care and staffing ratio than a standard PRTF and typically have multiple problems.

"Sub-Acute Services" means a planned regimen of 24-hour professionally directed evaluation, care, and treatment for individuals. Care is delivered by an interdisciplinary team to individuals whose sub-acute neurological and emotional/behavioral problems are sufficiently severe to require 24-hour care. However, the full resources of an acute care general hospital or medically managed inpatient treatment is not necessary. An example of subacute care is services to children with pervasive developmental disabilities including autism, hearing impaired and dually diagnosed individuals with mental retardation and behavioral problems.

"Treatment Program Components" means therapies, activities of daily living and rehabilitative services furnished by physician/psychologist or other licensed mental health professionals.

"Usual and customary charges" refers to the uniform charges listed in a provider's established charge schedule which is in effect and applied consistently to most patients and recognized for program reimbursement. To be considered "customary" for Medicaid reimbursement, a provider's charges for like services must be imposed on most patients regardless of the type of patient treated or the party responsible for payment of such services.

317:30-5-96.3. Methods of payment

(a) **Reimbursement.** Covered inpatient psychiatric and/or substance abuse services rendered on or after October 1, 2005, will be reimbursed using one of the following methodologies:

(1) Diagnosis Related Group (DRG);

(2) cost based; or

(3) a predetermined per diem payment.

(b) **Acute Level of Care.**

(1) Psychiatric units within general medical surgical hospitals and Critical Access hospitals. Payment will be made utilizing a DRG methodology. [See OAC 317:30-5-41(1)(B)];

(2) Freestanding Psychiatric Hospitals and Psychiatric Units within Rehabilitation Hospitals. A predetermined statewide per diem payment will be made. Rates vary for public and private providers.

(c) **Psychiatric Residential Treatment Facility (PRTF).**

(1) **Instate Levels of Service.**

(A) Community-Based, extended. A pre-determined all-inclusive per diem payment will be made for routine, ancillary and professional services.

(B) Community-Based, transitional. A pre-determined per diem payment will be made for routine services. All other services are separately billable.

(C) Freestanding, Private. A predetermined all-inclusive per diem payment will be made for routine, ancillary and professional services.

(D) Freestanding, Public. Facilities will be reimbursed using either the statewide or facility specific interim rates and settled to total allowable costs as determined by analyses of the cost reports (Form CMS 2552) filed with the OHCA.

(E) Provider based. A predetermined all-inclusive per diem payment will be made for routine, ancillary and professional services.

(2) **Out-of-state services.**

(A) Border and "border status" placements. Facilities are reimbursed in the same manner as in-state PRTFs.

(B) Out-of-state placements. In the event comparable services cannot be purchased from an Oklahoma facility and the current payment levels are insufficient to obtain access for the member, the OHCA may negotiate a predetermined, all-inclusive per diem rate for specialty programs/units and/or subacute services. An incremental payment adjustment may be made for 1:1 staffing (if clinically appropriate and prior authorized). Payment may be up to, but no greater, than usual and customary charges.

317:30-5-96.4. Outlier intensity adjustment

Subject to approval by the Centers for Medicare and Medicaid Services (CMS), an outlier payment may be made to instate hospitals and PRTFs on a case by case basis, to promote access for those patients who require expensive care. The intent of the outlier adjustment is to reflect the increased staffing requirements, comorbidities and longer lengths of stay, for children with developmental disabilities or eating disorders.

317:30-5-96.5. Disproportionate share hospitals (DSH)

Reimbursement for DSH is determined in accordance with the methodology for inpatient hospital services as described in Attachment 4.19 A of the Medicaid State Plan. Copies of the plan may be obtained by writing the Oklahoma Health Care Authority, 4545 Lincoln Boulevard, Oklahoma City, OK 73105 or may be downloaded from the OHCA website.

317:30-5-96.6. Payment for Medicare/Medicaid dual eligibles

Payment is made to hospitals for services to Medicare eligible individuals as set forth in this section. Payment is not made to freestanding psychiatric hospitals for inpatient coinsurance and/or deductible for individuals between 21 and 65 years of age.

(1) **Individuals eligible for Part A and Part B.**

(A) Payment is made utilizing the Medicaid allowable for comparable Part B services.

(B) Payment is made for the inpatient deductible for Part A services for categorically needy individuals under the age of 21 and age 65 and over.

(2) **Individuals who are not eligible for Part A services.** For individuals who have exhausted Medicare Part A benefits, claims must be accompanied by a statement from the Medicare Part A intermediary showing the date benefits were exhausted.

317:30-5-96.7. Cost reports

Each hospital submits to the OHCA its Medicare Cost Report (HCFA 2552), including Medicaid-specific information (as appropriate), for the annual cost reporting period. Failure to submit the required completed cost report is grounds for the OHCA to determine that a provider is not in compliance with its contractual requirements. The OHCA enters into a Common Audit Agreement with a designated fiscal intermediary to audit Medicaid cost reports. Hospitals submit a copy of their cost reports to this designated fiscal intermediary. All payments made to providers are subject to adjustment based upon final (audited) cost report information.

[OAR Docket #06-1022; filed 5-22-06]

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

[OAR Docket #06-1020]

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PERMANENT final adoption
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Part 9. Long Term Care Facilities
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Agency provider rules are revised to remove inconsistencies in language regarding the Preadmission Screening and Resident Review (PASRR) program. Additional revisions are needed to provide appeal guidelines that are consistent with other appeal guidelines found in various Sections of the Oklahoma Administrative Code.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 9. LONG TERM CARE FACILITIES

317:30-5-123. Patient certification for long term care

(a) **Medical eligibility.** Initial approval of medical eligibility for long-term care is determined by the OKDHS area nurse, or nurse designee. The certification is obtained by the facility at the time of admission.

(1) **Pre-admission screening.** Federal Regulations govern the State's responsibility for Preadmission Screening and Resident Review (PASRR) for individuals with mental illness and mental retardation. PASRR applies to the screening or reviewing of all individuals for mental illness or mental retardation or related conditions who apply to or reside in Title XIX certified nursing facilities regardless of the source of payment for the nursing facility services and regardless of the individual's or resident's known diagnoses. The NF must independently evaluate the Level I PASRR Screen regardless of who completes the form and determine whether or not to admit an individual to the facility. NFs which inappropriately admit a person without a PASRR Screen are subject to recoupment of funds. PASRR is a requirement for nursing facilities with dually certified (both Medicare and Medicaid) beds. There are no PASRR requirements for Medicare skilled beds that are not dually certified, nor is PASRR required for individuals seeking residency in an intermediate care facility for the mentally retarded (ICF/MR) ~~or in Medicare Skilled beds~~.

(2) **PASRR Level I screen.**

(A) Form LTC-300A, Long Term Care Pre-admission Screen, Section I, must be completed by ~~an authorized official of OKDHS, of the nursing facility, of the hospital or a physician. An authorized official is defined as~~:

(i) A licensed nurse from OKDHS;

(ii) The nursing facility administrator or co-administrator;

(iii) A licensed nurse, social service director, social worker, or other authorized NF official or designee from the nursing facility~~, hospital, or physician's office~~; or

(iv) A licensed nurse, social service director, or social worker from the ~~nursing facility or~~ hospital~~; or~~

~~(v) A social worker from the nursing facility, or the hospital~~.

(B) Section II of the LTC-300A must be completed by an authorized NF official or designee.

(~~B~~C) Prior to admission, ~~The~~ the authorized NF official ~~as defined in (1) of this subsection~~ must evaluate the properly completed OHCA Form LTC-300A ~~and/or the Uniform Comprehensive Assessment Tool and/or~~ and the Minimum Data Set (MDS), if available. Any other readily available medical and

social information is also used to determine if there currently exists any indication of mental illness (MI), mental retardation (MR), or other related condition, or if such condition existed in the applicant's past history. This evaluation constitutes the Level I PASRR Screen and is utilized in determining whether or not a Level II Assessment is necessary prior to allowing the patient to be admitted. The NF is also responsible for consulting with LOCEU regarding any MI/MR related condition information that becomes known either from completion of the MDS or throughout the resident's stay.

(~~C~~D) The nursing facility is responsible for determining from the evaluation whether or not the patient can be admitted to the facility. A "yes" response to any question from Form LTC-300A, Section I, will result in a consultation with the Level of Care Evaluation Unit (LOCEU) to determine if a Level II Assessment is needed. If there is any question as to whether or not there is evidence of MI, MR, or related condition, LOCEU should be contacted prior to admission. The LTC-300A original form and copy, as well as a copy of the MDS, comprises the PASRR eligibility information packet, and is to be submitted by mail to the LOCEU within 30 days of the resident admission.

(~~D~~E) Upon receipt and review of the medical eligibility information packet, the LOCEU may, in coordination with the OKDHS area nurse, re-evaluate whether a Level II PASRR assessment may be required. If a Level II Assessment is not required, the process of determining medical eligibility continues. If a Level II is required, a medical decision is not made until the results of the Level II Assessment are known.

(3) **Level II Assessment for PASRR.**

(A) Any one of the following three circumstances will allow a patient to enter the nursing facility without being subjected to a Level II PASRR Assessment.

(i) The patient has no current indication of mental illness or mental retardation or other related condition and there is no history of such condition in the patient's past.

(ii) The patient does not have a diagnosis of mental retardation or related condition~~, and a primary or secondary diagnosis of dementia including dementia of the Alzheimer's type is documented in writing by a physician~~.

(iii) ~~The patient~~ An individual may be admitted to an NF if he/she has indications of mental illness or mental retardation or other related condition, but is not a danger to self and/or others, and is being released from an acute care hospital as part of a medically prescribed period of recovery **(Exempted Hospital Discharge)**. If an individual is admitted to an NF based on ~~**Exempted Hospital Discharge**~~ Exempted Hospital Discharge, it is the responsibility of the NF to ensure that the individual is either discharged by the 30th day or that a Level II has been requested and is in process. Exempted Hospital Discharge is allowed only if all three of the following ~~three~~ conditions are met:

(I) The individual must be admitted to the NF directly from a hospital after receiving acute inpatient care at the hospital (not including psychiatric facilities);

(II) The individual must require NF services for the condition for which he/she received care in the hospital; and

(III) The attending physician must certify in writing before admission to the facility that the individual is likely to require less than 30 days of nursing facility services. The NF will be required to furnish this documentation to OHCA upon request.

(B) If the patient has current indications of mental illness or mental retardation or other related condition, or if there is a history of such condition in the patient's past, the patient cannot be admitted to the nursing facility until the LOCEU is contacted for consultation to determine if a Level II PASRR Assessment must be performed. ~~Instead, a~~ Results of any Level II PASRR Assessment ordered must ~~be performed and the results must~~ indicate that nursing facility care is appropriate prior to allowing the patient to be admitted.

~~(C) The State Mental Retardation (MR) (OKDHS/Developmental Disabilities Services Division) and Mental Illness (MI) (Department of Mental Health and Substance Abuse Services) authorities have developed **Advance Group Determinations** by category that take into account certain diagnoses, levels of severity of illness, or need for a particular service which clearly indicate that admission to an NF is normally needed, and that the provision of specialized services is not normally needed. These determinations are actual Level II decisions and not exemptions from the screening process. For those for whom a categorical determination is made, both the level of care determination and the specialized services determination must be addressed. All positive determinations concerning the need for specialized services must be based on a more extensive individualized evaluation.~~

(~~D~~C) The OHCA, LOCEU, authorizes Advance Group Determinations for the MI and MR Authorities in the following categories~~:~~ listed in (i) through (iii) of this subparagraph. Preliminary screening by the LOCEU should indicate eligibility for nursing facility level of care prior to consideration of the provisional admission.

(i) **Provisional admission in cases of delirium.** Any person with mental illness, mental retardation or related condition that is not a danger to self and or others, may be admitted to a Title XIX certified NF if the individual is experiencing

a condition that precludes screening, i.e., effects of anesthesia, medication, unfamiliar environment, severity of illness, or electrolyte imbalance.

(I) A Level II evaluation is completed immediately after the delirium clears. The LOCEU must be provided with written documentation by a physician that supports the individual's condition which allows provisional admission as defined in (i) of this subparagraph.

(II) Payment for NF services will not be made after the provisional admission ending date. If an individual is determined to need a longer stay, the individual must receive a Level II evaluation before continuation of the stay may be permitted and payment made for days beyond the ending date.

(ii) **Provisional admission in emergency situations.** Any person with a mental illness, mental retardation or related condition, who is not a danger to self and/or others, may be admitted to a Title XIX certified nursing facility for a period not to exceed seven days pending further assessment in emergency situations requiring protective services. The request for Level II evaluation must be made immediately upon admission to the NF if a longer stay is anticipated. The LOCEU must be provided with written documentation from OKDHS Adult Protective Services~~, or the NF,~~ which supports the individual's emergency admission. Payment for NF services will not be made beyond the emergency admission ending date.

(iii) **Respite care admission.** Any person with mental illness, mental retardation or related condition, who is not a danger to self and/or others, may be admitted to a Title XIX certified nursing facility to provide respite to in-home caregivers to whom the individual is expected to return following the brief NF stay. Respite care may be granted up to 15 consecutive days per stay, not to exceed 30 days per calendar year.

(I) In rare instances, such as illness of the caregiver, an exception may be granted to allow 30 consecutive days of respite care. However, in no instance can respite care exceed 30 days per calendar year.

(II) Respite care must be approved by LOCEU staff prior to the individual's admission to the NF. The NF provides the LOCEU with written documentation concerning circumstances surrounding the need for respite care, the date the individual wishes to be admitted to the facility, and the date the individual is expected to return to the caregiver. Payment for NF services will not be made after the respite care ending date.

(4) **Resident Review.**

(A) The nursing facility's routine resident assessment will identify those individuals previously undiagnosed as MR or MI. A new condition of MR or MI must be referred to LOCEU by the NF for determination of the need for the Level II Assessment. The facility's failure to refer such individuals for a Level II Assessment ~~will~~ may result in recoupment of funds.

(B) A Level II Resident Review ~~must~~ may be conducted the following year for each resident of a nursing facility who was found to experience a serious mental illness with no primary diagnosis of dementia on ~~their~~ his or her pre-admission Level II, to determine whether, because of the resident's physical and mental condition, the resident requires the level of services provided by a nursing facility and whether the resident requires specialized services.

(C) A significant change in a resident's ~~physical or~~ mental condition could trigger a Level II Resident Review. If such a change should occur in a resident's condition, it is the responsibility of the nursing facility to notify the LOCEU of the need to conduct a resident review.

(5) **Results of Level II Pre-Admission Assessment and Resident Review.** Through contractual arrangements between the OHCA and the MI/MR authorities, individualized assessments are conducted and findings presented in written evaluations. The evaluations determine if nursing facility services are needed, if specialized services or ~~lesser~~ less than specialized services are needed~~ and what types~~, and if the individual meets the federal PASRR definition of mental illness or mental retardation or related conditions. Evaluations are delivered to the LOCEU to process formal, written notification to patient, guardian, NF and interested parties.

(6) **Readmissions, and interfacility transfers.** The Preadmission Screening process does not apply to readmission of an individual to an NF after transfer for a continuous hospital stay, and then back to the NF. There is no specific time limit on the length of absence from the nursing facility for the hospitalization. Inter-facility transfers are also subject to ~~Resident Reviews rather than~~ preadmission screening. In the case of transfer of a resident from an NF to a hospital or to another NF, the transferring NF is responsible for ensuring that copies of the resident's most recent LTC-300A and any PASRR evaluations accompany the transferring resident. The receiving NF must submit an updated LTC-300A that reflects the resident's current status to LOCEU within 30 days of the transfer. Failure to do so could result in possible recoupment of funds. LOCEU should also be contacted prior to admitting out-of-state NF applicants with mental illness or mental retardation or related condition, so that PASRR needs can be ascertained. Any PASRR evaluations previously completed by the referring state should be forwarded to LOCEU as part of this PASRR consultation.

(7) **PASRR appeals process.**

(A) Any individual who has been adversely affected by any PASRR determination made by the State in the context of either a preadmission screening

or an annual resident review may appeal that determination by requesting a fair hearing. If the individual does not consider the PASRR decision a proper one, the individual or their authorized representative must contact the local county OKDHS office to discuss a hearing. Any request for a hearing must be made no later than ~~30~~ 20 days following the date of written notice. Appeals of these decisions are available under OAC 317:2-1-2. All individuals seeking an appeal have the same rights, regardless of source of payment. Level I determinations are not subject to appeal.

(B) When the individual is found to experience MI, MR, or related condition through the Level II Assessment, the PASRR determination made by the MR/MI authorities cannot be countermanded by the state Title XIX agency, either in the claims process or through other utilization control/review processes, or by the state survey and certification agency. Only appeals determinations made through the fair hearing process may overturn a PASRR determination made by the MR/MI authorities.

(b) **Determination of Title XIX medical eligibility for long term care.** The determination of medical eligibility for care in a nursing facility is made by the OKDHS area nurse, or nurse designee. The procedures for determining Nursing Facility (NF) program medical eligibility are found in OAC 317:35-19. Determination of ICF/MR medical eligibility is made by LOCEU. The procedures for obtaining and submitting information required for a decision are outlined below.

(1) **Pre-approval of medical eligibility.** Pre-approval of medical eligibility for private ICF/MR care is based on results of a current comprehensive psychological evaluation by a licensed psychologist or state staff psychologist, documentation of MR or related condition prior to age 22, and the need for active treatment according to federal standards. Pre-approval is made by LOCEU analysts.

(2) **Medical eligibility for ICF/MR services.** Within 30 calendar days after services begin, the facility must submit the original of the Long Term Care Assessment form (LTC-300) to LOCEU. Required attachments include current (within 90 days of requested approval date) medical information signed by a physician, a current (within 12 months of requested approval date) psychological evaluation, a copy of the pertinent section of the Individual Developmental Plan or other appropriate documentation relative to discharge planning and the need for ICF/MR level of care, and a statement that the client is not an imminent threat of harm to self or others (i.e., suicidal or homicidal). If pre-approval was determined by LOCEU and the above information is received, medical approval will be entered on MEDATS.

(3) **Categorical relationship.** Categorical relationship must be established for determination of eligibility for long-term medical care. If categorical relationship to disability has not already been established, the proper forms and medical information are submitted to LOCEU. (Refer to OAC 317:35-5-4). In such instances, LOCEU will render a decision on categorical relationship using the same definition as used by SSA. A follow-up is required by the OKDHS worker with the Social Security Administration to be sure that their disability decision agrees with the decision of LOCEU.

[OAR Docket #06-1020; filed 5-22-06]

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

[OAR Docket #06-1010]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 21. Outpatient Behavioral Health Services
317:30-5-240. through 317:30-5-241. [AMENDED]
317:30-5-248. [AMENDED]
(Reference APA WF # 05-30)
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Rules are revised to include the following services: Mental Health Clubhouse requirements for the Severally Mentally Ill (SMI); Family Support and Training service for the Severally Emotionally Disabled (SED) within a System of Care program; and Community/Recovery Support service for the SMI. These services are provided through an Oklahoma Department of Mental Health and Substance Abuse (ODMHSAS) public or contracted program. Additional revisions include: extending Behavioral Health Aid services to Oklahoma Juvenile Affairs (OJA) and Oklahoma Department of Human

Services (OKDHS) custody children residing in a Residential Behavioral Management Services (RBMS) facility; clarifying language throughout the amended sections for providers of Alcohol and other Drug Treatment Disorders and Outpatient Behavioral Health; and clarifying guidelines for maximum services billed per day/month.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 21. OUTPATIENT BEHAVIORAL HEALTH SERVICES

317:30-5-240. Eligible providers

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

(1) **"AOA"** means American Osteopathic Association.

(2) **"AOD"** means Alcohol and Other Drug.

(3) **"AODTP"** means Alcohol and Other Drug Treatment Professionals.

(4) **"ASAM"** means the American Society of Addiction Medicine.

(5) **"ASI"** means the Addiction Severity Index.

(6)**"BHRS"** means Behavioral Health Rehabilitation Specialist.

(7) **"CARF"** means Commission on Accreditation of Rehabilitation Facilities.

(8) **"CHCs"** means Community Health Centers.

(~~8~~9) **"CMHCs"** means Community Mental Health Centers.

(~~9~~10) **"COA"** means Council on Accreditation of Services for Families and Children, Inc.

(~~10~~11) **"DSM"** means the ~~Diagnosite~~ Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association.

(12) **"EBP"** means an Evidenced Based Practice per SAMHSA.

(13) **"FQHC"** means Federally Qualified Health Centers that are entities known as Community Health Centers.

(14) **"ICCD"** means International Center for Clubhouse Development.

(~~11~~15) **"ICF/MR"** means Intermediate Care Facility for the Mentally Retarded.

(16) **"I/T/U"** means Indian Health Services/Tribal Clinics/Urban Tribal Clinic facilities.

(~~12~~17) **"JCAHO"** means Joint Commission on Accreditation of Healthcare Organizations.

(~~13~~18) **"MHP"** means Mental Health Professional.

(~~14~~19) **"OAC"** means Oklahoma Administrative Code, 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.

(~~15~~20) **"ODMHSAS"** means the Oklahoma Department of Mental ~~Heatlh~~ Health and Substance Abuse Services.

(~~16~~21) **"ODMHSAS Contracted ~~Facilties~~ Facilities"** means those providers that have a contract with the ODMHSAS to provide mental health or substance abuse treatment services, and also contract directly with the Oklahoma ~~Healthcare~~ Health Care Authority to provide Outpatient Behavioral Health Services.

(~~17~~22) **"OHCA"** means the Oklahoma Health Care Authority.

(~~18~~23) **"Private Facilities"** means those providers that contract directly with the Oklahoma ~~Healthcare~~Health Care Authority to provide Outpatient Behavioral Health Services.

(~~19~~24) **"Public Facilities"** means those providers who are regionally based Community Mental Health Centers who are also contract directly with the Oklahoma ~~Healthcare~~ Health Care Authority to provide Outpatient Behavioral Health Services.

(~~20~~25) **"RBMS"** means Residential Behavioral Management Services within a group home or therapeutic foster home.

(26) **"RHC"** means Rural Health Clinic.

(27) **"SAMHSA"** means the Substance Abuse and Mental Health Services Administration.

(b) ~~**Accredited outpatient organizations**~~ **Provider Agency Requirements**. Rehabilitative services are provided by:

(1) Community based outpatient behavioral health organizations, that have a current accreditation status as a provider of behavioral health services, from the CARF, JCAHO, or COA. Providers accredited by CARF/JCAHO/COA must be able to demonstrate that the Scope of the current accreditation includes all programs, services and sites where Medicaid compensated services are rendered. CARF/JCAHO/COA accredited providers will only receive Medicaid reimbursement for services provided under the programs, which are accredited. Programs that serve adults (over 17) with serious mental illness utilizing clubhouse model may substitute accreditation from the International Center for Clubhouse Development (ICCD) in lieu of CARF, JCAHO, or COA accreditation.

(A) Psychiatric Hospitals appropriately licensed and certified by the State Survey Agency as meeting Medicare psychiatric hospital standards including JCAHO accreditation. Psychiatric Hospitals must be able to demonstrate the scope of the current accreditation includes all programs and sites where Medicaid Outpatient Behavioral services will be performed.

(B) Acute Care Hospitals appropriately licensed and certified by the State Survey Agency as meeting Medicare standards, including a JCAHO or AOA certification. Acute Care Hospitals must be able to demonstrate the scope of the current accreditation includes all programs and sites where Medicaid Outpatient Behavioral Health Services will be performed.

(C) Providers of Alcohol and other Drug Treatment Disorders must be certified by the designated state certifying agency, the ODMHSAS~~, on or before December 31, 2005~~. Providers certified by ODMHSAS must be actively working toward accreditation by one of the three recognized accrediting bodies. Providers in this category must have achieved accreditation from JCAHO, CARF, or COA for the provision of outpatient alcohol and other drug treatment services by January 1, 2007.

(2) Eligible organizations must meet one of the following standards and criteria:

(A) Be an incorporated organization governed by a board of directors; or

(B) A state-operated program under the direction of the ODMHSAS.

(3) Eligible organizations must meet each of the following:

(A) Have a well-developed plan for rehabilitation services designed to meet the recovery needs of the individuals served.

(B) Have a multi-disciplinary, professional team. This team must include all of the following:

~~(i) An allopathic or osteopathic Physician licensed in the state in which the service is delivered.~~

(~~ii~~i) One of the following licensed ~~mental~~ behavioral health professionals:

(I) A Psychologist, Clinical Social Worker, Professional Counselor, Behavioral Practitioner, ~~or~~ Marriage and Family Therapist, or Alcohol and Drug Counselor licensed in the state in which the services are delivered, or

(II) An Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided, or

(III) An allopathic or osteopathic physician with a current license and board certification in psychiatry in the state in which the service is delivered, or board eligible.

(~~iii~~ii) A Behavioral Health Rehabilitation Specialist as described in subsection (e) of this section, if individual or group rehabilitative services for mental illnesses are provided.

(~~iv~~iii) ~~A~~ An ~~Certified~~ Alcohol and Other Drug Treatment ~~Counselor~~ Professional if treatment of alcohol and other drug disorders is provided.

(~~v~~iv) A registered nurse or physician assistant, with a current license to practice in the state in which the services are delivered if Medication Training and ~~Suppport~~ Support service is provided.

(v) The member for which the services will be provided, and parent/guardian for those under 18 years of age.

(vi) A member treatment advocate if desired and signed off on by the member.

(C) Demonstrate the ability to provide each of the following outpatient behavioral health treatment services as described in OAC 317:30-5-241. ICCD certified clubhouses, ~~Sites~~ sites as identified by ODMHSAS as exclusively providing Community-based structured emergency care, or Program for Assertive Community Treatment services are exempted from this requirement.

(i) Mental Health Assessments and/or Alcohol and Drug assessments;

(ii) Individual, Group, and Family ~~Psycho Therapy~~ Psychotherapy;

(iii) Individual and Group Rehabilitative services relevant to the population to be served and Alcohol and other Drug Related Services Skill development services if offered by the provider;

(iv) Mental Health and/or Substance Abuse Services Plan done by a non-physician (moderate and low complexity; and

(v) Crisis Intervention services.

(D) Be available 24 hours a day, seven days a week, for Crisis Intervention services. ICCD certified clubhouses must have an arrangement by which crisis intervention services are available.

(E) Provide or have a plan for referral to physician services necessary for the treatment of the behavioral disorders of the population served.

(F) Comply with all applicable Federal and State Regulations.

(G) Have appropriate written policy and procedures regarding confidentiality and protection of information and records, ~~patient~~ member grievances, ~~patient~~ member rights and responsibilities, and admission and discharge criteria, which shall be posted publicly and conspicuously. Discharge criteria is not required for ICCD certified clubhouses.

(H) Demonstrate the ability to keep appropriate records and documentation of services performed.

(I) Maintain and furnish, upon request, a current report of fire and safety inspections of facilities clear of any deficiencies.

(J) Maintain and furnish, upon request, all required staff credentials including certified transcripts documenting required degrees.

(4) Provider Specialties.

(A) Public and ODMHSAS Contracted Programs Facilities - Public facilities are the regionally based Community Mental Health Centers and ODMHSAS

contracted programs are providers that have a contract with the ODMHSAS to provide Mental Health ~~or~~ and/or Substance Abuse Treatment Services.

(B) Private Programs - Private facilities are those facilities that contract directly with the Oklahoma ~~Healthcare~~ Health Care Authority to provide Outpatient Behavioral Health Services.

(C) Federally Qualified Health Centers/Community Health Centers - FQHCs are those facilities that qualify under OAC 317:30-5-660.

(D) Indian Health Services/Tribal Clinics/Urban Tribal Clinics - I/T/Us are those facilities that qualify under Federal regulation.

(E) Rural Health Clinics - RHCs are those facilities that qualify under OAC 317:30-5-355.

(c) **Provider enrollment and contracting.**

(1) Organizations who have JCAHO, CARF, ICCD, COA or AOA accreditation will supply the documentation from the accrediting body, along with other information as required for contracting purposes to the OHCA. If the application is approved, a separate provider identification number for each outpatient Behavioral Health Service site will be assigned. The contract must include copies of all required state licenses, accreditation and Medicaid certifications.

(2) Each site operated by an outpatient mental health facility must have a separate provider number. A site is defined as an office, clinic, or other business setting where outpatient behavioral health services are routinely performed. When services are rendered at the ~~patient's~~ member's residence, a school, or when provided occasionally at an appropriate community based setting, a site is determined according to where the professional staff perform administrative duties and where the ~~patient's~~ member's chart and other records are kept. Failure to obtain and utilize site specific provider numbers will result in disallowance of services.

~~(3) Each MHP, AODTP, BHRS, Nurse, or Physician Assistant performing services for any contracted Outpatient Behavioral Health agency must obtain an individual practitioner identification number. This number is submitted on the claim for each treatment service performed by that practitioner beginning July 1, 2005.~~

(d) **Mental Health Professional.** Mental Health Professionals (MHPs) are defined as follows for the purpose of Outpatient Behavioral Health Services:

(1) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry practicing as described in OAC 317:30-5-2.

(2) Practitioners with a license to practice in the state in which services are provided or those actively and regularly receiving board approved supervision, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to become licensed by one of the licensing boards listed in (A) through ~~(E)~~ (F) below. The exemptions from licensure under 59 §1353(4) (Supp. 2000) and (5), 59 §1903(C) and (D) (Supp. 2000), 59 §1925.3(B) (Supp. 2000) and (C), and 59 §1932(C) (Supp. 2000) and (D) do not apply to Outpatient Behavioral Health Services.

(A) Psychology,

(B) Social Work (clinical specialty only),

(C) Professional Counselor,

(D) Marriage and Family Therapist, ~~or~~

(E) Behavioral Practitioner, or

(F) Alcohol and Drug Counselor.

(3) Advanced Practice Nurse (certified in a psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided.

(e) **Behavioral Health Rehabilitation Specialist.** The definition of a Behavioral Health Rehabilitation Specialist (BHRS) is as follows:

(1) Bachelor or master degree in a ~~mental~~ behavioral health related field including, but not limited to, psychology, social work, occupational therapy, sociology, school guidance and counseling, criminal justice, family studies; or

(2) Bachelor or master degree that demonstrates the individual completed and passed equivalent college level course work to meet the degree requirements of (1) of this subsection, as reviewed and approved by OHCA or its designated agent; or

(~~2~~3) A current license as a registered nurse in Oklahoma with behavioral health experience; or

(~~3~~4) Certification as an Alcohol and Drug Counselor. Allowed to provide substance abuse rehabilitative treatment to those with alcohol and/or other drug dependencies or addictions as a primary or secondary DSMIV Axis I diagnosis; or

(~~4~~5) Current certification as a Behavioral Health Case Manager from ODMHSAS and meets OHCA requirements to perform case management services, as described in OAC 317:30-5-585(1).

(f) **Alcohol and other Drug (AOD) Treatment Professionals (AODTP).** Alcohol and other Drug Treatment Professionals are defined as practitioners who are:

(1) Licensed to practice as an Alcohol and Drug Counselor in the state in which services are provided, or those actively and regularly receiving board approved supervision to become licensed;

(2) Certified as an Advanced Alcohol and Drug Counselor as recognized and approved by an ODMHSAS AOD treatment certifying and/or licensing body;

(3) Certified as an Alcohol and Drug Counselor as recognized and approved by an ODMHSAS ~~recognized and approved~~ AOD treatment certifying and/or licensing body; or

(4) A MHP with a current license, or those actively and regularly receiving board approved supervision to become licensed, and extended supervision by a fully licensed clinician if board's supervision requirement is met but the individual is not yet licensed, to practice who

can demonstrate competency in the area of alcohol and drug counseling and treatment.

317:30-5-241. Coverage for adults and children

(a) **Service descriptions and conditions.** Outpatient behavioral health services are covered for adults and children as set forth in this Section, unless specified otherwise, and when provided in accordance with a documented individualized service plan, developed to treat the identified mental health and/or substance abuse disorder(s). All services are to be for the goal of improvement of functioning, independence, or well being of the ~~client~~ member. The ~~client~~ member must be able to actively participate in the treatment. Active participation means that the ~~client~~ member must have sufficient cognitive abilities, communication skills, and short-term memory to derive a reasonable benefit from the treatment. The assessment must include a DSM multi axial diagnosis completed for all five axes from the most recent DSM version. All services will be subject to medical necessity criteria. For ODMHSAS Contracted, FQHCs, CHCs, RHCs, I/T/Us facilities, and Private facilities, an agent designated by the Oklahoma Health Care Authority will apply the medical necessity criteria. For public facilities (regionally based CMHCs), the medical necessity criteria will be self-administered following the same required prior authorization elements as the private and contracted (ODMHSAS) agencies under OAC 317:30-5-241(b)(4)(B)(i). Non prior authorized services will not be Medicaid compensable with the exception of Mental Health Assessment by a Non-Physician, Alcohol and Drug Assessment, Mental Health Service Plan Development (moderate complexity), Alcohol and/or Substance Abuse Services Treatment Plan Development (moderate complexity), Crisis Intervention Services (by a MHP and Facility based), and Program of Assertive Community Treatment Services (PACT). Payment is not made for Outpatient Behavioral Health Services for children who are receiving Residential Behavioral Management Services in a Group Home or Therapeutic Foster Care ~~with the exception of Psychotherapy services which must be~~ unless authorized by the OHCA or its designated agent as medically necessary. ~~and indicated, and~~ Adults and children in Facility Based Crisis Intervention Services ~~(facility based)~~ cannot receive additional Outpatient Behavioral Health Services outside of the admission and discharge dates. Residents of nursing facilities are not eligible for Outpatient Behavioral Health services.

(1) **Mental Health Assessment by a Non-Physician** includes a history of psychiatric symptoms, concerns and problems, an evaluation of mental status, a psychosocial and medical history, a full five axes diagnosis and evaluation of current functioning, and an evaluation and assessment of alcohol and other drug use (historic and present). The service must also include an evaluation of the ~~client's~~ member's strengths and information regarding the ~~client's~~ member's treatment preferences. For adults, it may include interviews or communications with family, caretakers, or other support persons as permitted by the ~~client~~ member. For children under the age of 18, it must include an interview with a parent, or other adult caretaker. For children, the assessment must also include information on school performance and school based services. This service is performed by an MHP. The minimum face-to-face time spent in assessment with the ~~client~~ member and others as identified previously in this paragraph for a low complexity Mental Health Assessment by a Non-Physician is one and one half hours. For a moderate complexity, it is two hours or more. This service is compensable on behalf of a ~~client~~ member who is seeking services for the first time from the contracted agency. This service is not compensable if the ~~client~~ member has previously received or is currently receiving services from the agency, unless there has been a gap in services of more than six months and it has been more than one year since the previous assessment. ~~This service is not allowed for AOD providers.~~

(2) **Alcohol and Drug Assessment.** Alcohol and Drug Assessment includes an assessment of past and present alcohol and other drug use. The ASI is to be completed. This service includes an evaluation of current and past functioning in all major life areas and an evaluation of potential mental illnesses that may also impact treatment. It includes a full five axes diagnosis. The service must also include an evaluation of the ~~client~~ member's strengths and weaknesses and information regarding the ~~client's~~ member's treatment preferences. For adults, it may include interviews and/or communication with family, caretakers or other support persons as permitted by the ~~client~~ member. For children under the age of 18, it must include an interview with a parent or other adult caretaker. For children, the assessment must also include information on school performance and school based services. This service is performed by an AODTP. The minimum face to face time spent in assessment with the ~~client~~ member (and other family or caretakers as previously described in this paragraph) for a low complexity is one and one-half hours. For a moderate complexity it is two hours or more. This service is compensable on behalf of a ~~client~~ member who is seeking services for the first time from the contracted agency. The service is not compensable if the ~~client~~ member has previously received or is currently receiving services from the agency, unless there has been a gap in services of more than six months and it has been more than one year since the previous assessment. ~~This service is not allowed for Mental Health Providers.~~

(3) **Mental Health Services Plan Development by a Non-Physician (moderate complexity).** Mental Health Services Plan Development by a Non-Physician (moderate complexity) is to be performed by the practitioners and others who will comprise the treatment team. It is performed with the direct active participation of the ~~client~~ member and a ~~client~~ member support person or advocate if requested by the ~~client~~ member. In the case of children under the age of 18, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate. The Mental Health Services Plan is developed based on information obtained in the mental health assessment and includes the evaluation of assessment and determined diagnosis by the practitioners and

the ~~client~~ member of all pertinent information. It includes a discharge plan. It is a process whereby an individualized rehabilitation plan is developed that addresses the ~~client's~~ member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time limited. For adults, it must be focused on recovery and achieving maximum community interaction and involvement including goals for employment, independent living, volunteer work, or training. For children, the service plan must address school and educational concerns and assisting the family in caring for the child in the least restrictive level of care. Each type of service to be received must be delineated in the service plan and the practitioner who will be providing and responsible for each service must be identified. In addition, the anticipated frequency of each type of service must be included. This service is provided by the ~~client~~ member treatment team. This includes all staff responsible for the treatment services delineated in the plan, the ~~client~~ member (if over age 14), and the parent/guardian if under age 18. The service plan is not valid until it is signed and dated by the responsible MHP, ~~the treating physician,~~ the ~~client~~ member, the guardian (if applicable), and any other direct service provider, and all requirements have been met. The clinician performing a service must be the same clinician as delineated on the treatment plan. Any provider changes made during a treatment plan period would need to be noted with a statement documenting the change on the treatment plan with new signatures and dates by the provider and the member. Each signature must have the date written by the signing party on the date of signing. One unit per Medicaid recipient per provider is allowed without prior authorization. If determined by OHCA or its designated agent, one additional unit per year may be authorized.

(4) **Mental Health Services Plan Development by a Non-Physician (low complexity).** Mental Health Services Plan Development by a Non-Physician (low complexity) is for the purpose of reviewing, revising and updating an established Mental Health Services Plan. All elements of the plan must be reviewed with the ~~client~~ member and treatment progress assessed. When significant progress toward recovery and the treatment goals is not occurring, the service plan must be altered in order to support and maximize progress toward recovery. When significant progress has been made, the plan must be updated to reflect the improved ~~client's~~ member's abilities and strengths and services adjusted accordingly. Mental Health Services Plan Development by a Non-Physician (low complexity) will be provided by the treatment team members. The review is not valid until signed and separately dated by the responsible MHP, ~~the responsible physician (if client is receiving medication or otherwise under the care of the physician),~~ the ~~client~~ member, the guardian (if applicable), and any other direct service provider, and all requirements have been met. The clinician performing a service must be the same clinician as delineated on the treatment plan. Any provider changes made during a treatment plan period would need to be noted with a statement documenting the change on the treatment plan with new signatures and dates by the provider and the member.

(5) **Alcohol and/or Substance Abuse Services, Treatment Plan Development (moderate complexity).** Alcohol and Substance Abuse Treatment Plan Development (moderate complexity) is to be performed by the AODTP practitioners and others who will comprise the treatment team. The current edition of the ASAM criteria is to be utilized and followed. The service is performed with the direct active participation of the ~~client~~ member and a ~~client~~ member support person or advocate if requested by the ~~client~~ member. In the case of children under the age of 18, it is performed with the participation of the parent or guardian and the child as age and developmentally appropriate. The Plan is developed based on information obtained in the assessment and includes the evaluation of all pertinent information by the practitioners and the ~~client~~ member. The service includes a discharge plan. The service is a process whereby an individualized rehabilitation plan is developed that addresses the ~~client's~~ member's strengths, functional assets, weaknesses or liabilities, treatment goals, objectives and methodologies that are specific and time limited. For adults, it must be focused on recovery and achieving maximum community interaction and involvement including goals for employment, independent living, volunteer work, or training. For children, the service plan must address school and educational concerns and assisting the family in caring for the child in the least restrictive level of care. Each type of service to be received must be delineated in the service plan and the practitioner who will be providing and responsible for each service must be identified. In addition, the anticipated frequency of each type of service must be included. This service is provided by the ~~client~~ treatment team. This includes all staff responsible for the treatment services delineated in the plan, the ~~client~~ member (if over age 14), and the parent/guardian if under age 18. The service plan is not valid until it is signed and dated by the responsible AODTP, ~~the treating physician,~~ the ~~client~~ member, the guardian (if applicable), and any other direct service provider, and all requirements have been met. Each signature must have the date written by the signing party on the date of signing. The clinician performing a service must be the same clinician as delineated on the treatment plan. Any provider changes made during a treatment plan period would need to be noted with a statement documenting the change on the treatment plan with new signatures and dates by the provider and the member. One unit per Medicaid recipient per provider is allowed without prior authorization. If determined by OHCA or its designated agent, one additional unit per year may be authorized.

(6) **Alcohol and/or Substance Abuse Treatment Plan Development (low complexity).** Alcohol and/or Substance Abuse Treatment Plan Development (low complexity) is for the purpose of reviewing, revising and

updating an established Mental Health Services Plan. The ASAM criteria will be utilized in the development of the Plan. All elements of the plan must be reviewed with the ~~client~~ member and treatment progress assessed. When significant progress toward recovery and the treatment goals is not occurring, the service plan must be altered in order to support and maximize progress toward recovery. When significant progress has been made, the plan must be updated to reflect the improved ~~client's~~ member's abilities and strengths and services adjusted accordingly. Alcohol and/or Substance Abuse Treatment Plan Development (low complexity) will be provided by the treatment team members. The review is not valid until signed and separately dated by the responsible AODTP, ~~the responsible physician (if client is receiving medication or otherwise under the care of the physician),~~ the ~~client~~ member, the guardian (if applicable), and any other direct service provider, and all requirements have been met. The clinician performing a service must be the same clinician as delineated on the treatment plan. Any provider changes made during a treatment plan period would need to be noted with a statement documenting the change on the treatment plan with new signatures and dates by the provider and the member.

(7) **Individual/Interactive Psychotherapy.**

(A) Individual Psychotherapy is a face-to-face treatment for mental illnesses and behavioral disturbances, in which the clinician, through definitive therapeutic communication, attempts to alleviate the emotional disturbances, reverse or change maladaptive patterns of behavior and encourage growth and development. Insight oriented, behavior modifying and/or supportive psychotherapy refers to the development of insight of affective understanding, the use of behavior modification techniques, the use of supportive interactions, the use of cognitive discussion of reality, or any combination of these items to provide therapeutic change.

(B) Interactive Psychotherapy is ~~generally furnished to children and~~ individual psychotherapy that involves the use of play therapy equipment, physical ~~aids~~ aids/devices, language interpreter, or other mechanisms of ~~and~~ nonverbal communication to overcome barriers to the therapeutic interaction between the clinician and the ~~client~~ member who has not yet developed or who has lost either the expressive language communication skills to explain his/her symptoms and response to treatment, or the receptive communication skills to understand the clinician. The service may be used for adults who are hearing impaired and require the use of a language interpreter due to language barriers.

(C) There are a total of six different compensable units of individual/interactive psychotherapy, three each for interactive and individual psychotherapy. They are Individual Insight Oriented, Behavior Modifying and/or Supportive Psychotherapy in an Outpatient Setting (20 - 30 minutes, 45 - 50 minutes, and 75 - 80 minutes), and Interactive Psychotherapy in an office or Outpatient Setting (20 - 30 minutes, 45 - 50 minutes, and 75 - 80 minutes). There is a maximum of one unit of either Individual or Interactive Psychotherapy per day. With the exception of a qualified interpreter if needed, only the ~~client~~ member and the MHP or AODTP should be present and the setting must protect and assure confidentiality. Ongoing assessment of the ~~client's~~ member's status and response to treatment as well as psycho-educational intervention are appropriate components of individual counseling. The counseling must be goal directed, utilizing techniques appropriate to the service plan and the ~~client's~~ member's developmental and cognitive abilities.

(D) Individual/Interactive counseling must be provided by a MHP when treatment is for a mental illness and by an AODTP when treatment is for an alcohol or other drug disorder.

(8) **Group Psychotherapy.**

(A) Group psychotherapy is a method of treating behavioral disorders using the interaction between the MHP when treating mental illness or the AODTP when treating alcohol and other drug disorders, and two or more individuals to promote positive emotional or behavioral change. The focus of the group must be directly related to the goals and objectives in the individual ~~client's~~ member's current service plan. This service does not include social or daily living skills development as described under Individual and Group Psychosocial Rehabilitation Services, or Alcohol and/or Substance Abuse Services Skills Development.

(B) Group Psychotherapy must take place in a confidential setting limited to the MHP or the AODTP conducting the service, an assistant or co-therapist, if desired, and the group psychotherapy participants. Group Psychotherapy is limited to a total of eight adult individuals except when the individuals are residents of an ICF/MR where the maximum group size is six. For all children under the age of 18, the total group size is limited to six. The typical length of time for a group psychotherapy session is one hour to one and one-half hours. A maximum of two Group Psychotherapy ~~units~~ sessions per day are allowed. Partial units are acceptable when the whole unit of time/service is not utilized. The individual ~~client's~~ member's behavior, the size of the group, and the focus of the group must be included in each ~~client's~~ member's medical record. As other members' personal health information cannot be included, the agency may keep a separate group log which contains detailed data on the group's attendees. A group may not consist solely of related individuals.

(C) Group psychotherapy will be provided by a MHP when treatment is for a mental illness and by an AODTP when treatment is for an alcohol or other drug disorder.

(9) **Family Psychotherapy.**

(A) Family Psychotherapy is a face-to-face psychotherapeutic interaction between a MHP or an AOD and the ~~client's~~ member's family, guardian, and/or support system. It is typically inclusive of the identified ~~client~~ member, but may be performed if indicated without the ~~client's~~ member's presence. When the ~~client~~ member is an adult, his/her permission must be obtained in writing. Family psychotherapy must be provided for the direct benefit of the Medicaid recipient to assist him/her in achieving his/her established treatment goals and objectives and it must take place in a confidential setting. This service may include the Evidence Based Practice titled Family Psychoeducation.

(B) The length of a Family Psychotherapy session is one hour to one and one-half hour. No more than two ~~hours~~ sessions of Family Psychotherapy are allowed per day. This is also the maximum per family unit (unless prior authorization is given by OHCA or its designated agent). Partial units are acceptable when the whole unit of time/service is not utilized. Family Psychotherapy must be provided by a MHP when treatment is for a mental illness and by an AODTP when treatment is for an alcohol or other drug disorder.

(10) **Psychosocial Rehabilitation Services (group).**

(A) Psychosocial Rehabilitation Services (PSR) are behavioral health remedial services which are necessary to improve the ~~client's~~ member's ability to function in the community. They are performed to improve the skills and abilities of ~~clients~~ members to live interdependently in the community, improve self-care and social skills, and promote lifestyle change and recovery practices. This service may include the Evidence Based Practice of Illness, Management, and Recovery. This service is generally performed with only the members, but may include a member and the member's family/support system group that focuses on the member's diagnosis, management, and recovery based curriculum. This service may take the form of a work units component in a General PSR program certified through the ODMHSAS. Each day of PSR must be reflected by documentation in the ~~client~~ member's records, and must include the following:

(i) date;

(ii) start and stop time(s) for each day of service;

(iii) signature of the rehabilitation clinician;

(iv) credentials of the rehabilitation clinician;

(v) specific goal(s) and/or objectives addressed (these must be identified on recovery plan);

(vi) type of skills training provided;

(vii) progress made toward goals and objectives;

(viii) ~~client~~ member's report of satisfaction with staff intervention; and

(ix) any new needed supports identified during service.

(B) Compensable Psychosocial Rehabilitation Services are provided to ~~clients~~ members who have the ability to benefit from the service. The services performed must have a purpose that directly relates to the goals and objectives of the ~~client's~~ member's current service plan. A ~~client~~ member who at the time of service is not able to cognitively benefit from the treatment due to active hallucinations, substance use, or other impairments is not suitable for this service.

(C) Travel time to and from PSR treatment is not compensable. Breaks, lunchtime and times when the ~~client~~ member is unable or unwilling to participate are not compensable. The minimum staffing ratio is fourteen ~~clients~~ members for each BHRS, AODTP, or MHP for adults and eight to one for children under the age of eighteen. Countable professional staff must be appropriately trained in a recognized behavioral/management intervention program such as MANDT or CAPE. In order to develop and improve the ~~client's~~ member's community and interpersonal functioning and self care abilities, rehabilitation may take place in settings away from the Outpatient Behavioral Health agency site. When this occurs, the BHRS, AODTP, or MHP must be present and interacting, teaching, or supporting the defined learning objectives of the ~~client~~ member for the entire claimed time. The service is a fifteen minute time frame and may be billed up to a maximum of 24 units per day for adults and 16 units per day for children. The rate of compensation for this service includes the cost of providing transportation for recipients who receive this service, but do not have their own transportation or do not have other support persons able to provide or who are responsible for the transportation needs. The OHCA transportation program will arrange for transportation for those who require specialized transportation equipment. Residents of ICF/MR facilities and children receiving RBMS in a group home or therapeutic Foster Home are not eligible for this service, unless prior approved by OHCA or its designated agent.

(D) A BHRS, AODTP (when treatment is for an alcohol or other drug disorder), or MHP may perform group psychosocial rehabilitation services, using a treatment curriculum approved by a MHP.

(E) **Mental Health Clubhouse Services.** Mental Health Clubhouse Services are provided within an ICCD certified clubhouse, and promote the principles and practices of a work ordered day. Services are provided to individuals 18 years of age or older with serious mental illness, and are performed to improve the member's ability to function in the community. Services are focused on improving the skills and abilities of member to live interdependently in the community, assisting members with social, financial, and vocational goals, and the promotion of lifestyle

change and recovery practices. Compensable Mental Health Clubhouse Services are provided to members who have the ability to benefit from the service. The services performed must have a purpose that directly relates to the goals of the member's current Recovery Plan. The Recovery Plan is to be developed by the member, or advocate if requested by the member, and the rehabilitation treatment team. The Recovery Plan is developed based on review of the diagnostic and history information, received through clinical records acquisition, necessary to confirm that an individual meets criteria for a serious mental illness, and the completion of an Assessment Records or other assessment approved by OHCA. The plan is to address the member's strengths, functional assets, individual goals, and supports needed to achieve those goals. The Recovery Plan is not valid until it is signed and dated by the responsible MHP, the member, the guardian (if applicable), and any other direct service provider, and all requirements have been met. Each signature must have the date written by the signing party on the date of signing.

(F) Mental Health Clubhouse Services are provided following the standards of the ICCD. A BHRS or MHP may perform Mental Health Clubhouse Services. The minimum staffing ratio is fourteen members for each BHRS or MHP. The service unit is a 15 minute unit with a maximum of 24 units per day inclusive of rehabilitation services provided through the work ordered day. Medicaid recipients who are receiving this service may not receive other Rehabilitation Services.

(G) Each day of Mental Health Clubhouse Services must be reflected by documentation in the member's records and must include the following:

(i) date;

(ii) start and stop time(s) for each day of service;

(iii) signature of the rehabilitation clinician;

(iv) credentials of the rehabilitation clinician;

(v) specific goal(s) addressed (goal must be identified on recovery plan);

(vi) type of skills training provided;

(vii) progress made toward goals;

(viii) member's satisfaction with the services; and

(ix) any new needed supports identified during service.

(11) **Psychosocial Rehabilitation Services (individual).**

(A) Psychosocial Rehabilitation (PSR) Services (individual) is performed for the same purposes and under the same description and requirements as Psychosocial Rehabilitation Services (group) [Refer to paragraph (10) of this subsection]. The service is generally performed with only the ~~client~~ member present, but may include the ~~client's~~ member's family or support system in order to educate them about the rehabilitative activities, interventions, goals and objectives. This service may include the Evidence Based Practice of Illness, Management, and Recovery.

(B) A BHRS, AODTP (when treatment is for an alcohol or other drug disorder, or MHP must provide this service. Residents of ICF/MR facilities and children receiving RBMS in a group home or therapeutic Foster Home are not eligible for this service, unless prior approved by OHCA or its designated agent. This billing unit is fifteen minutes and no more than six units per day are compensable. Children under an ODMHSAS Systems of Care program may be prior authorized additional units as part of an intensive transition period.

(12) **~~Psychological testing~~ Assessment/Evaluation testing.**

(A) ~~Psychological~~ Assessment/Evaluation testing is provided by a ~~psychologist~~ clinician utilizing tests selected from currently accepted ~~psychological~~ assessment test batteries. Test results must be reflected in the Mental Health Services plan. The medical record must clearly document the need for the testing and what the testing is expected to achieve.

(B) ~~Psychological~~ Assessment/Evaluation testing will be provided by a psychologist, certified psychometrist, or a psychological technician of a psychologist or a MHP.

(13) **Alcohol and/or Substance Abuse Services, Skills Development (group).**

(A) Alcohol and/or Substance Abuse Services, Skills Development (group) consists of the therapeutic education of ~~clients~~ members regarding their AOD addiction or disorder. The service may also involve teaching skills to assist the individual in how to live independently in the community, improve self care and social skills and promote and support recovery. The services performed must have a purpose that directly relates to the goals and objectives of the ~~client's~~ member's current service plan. A ~~client~~ member who at the time of service is not able to cognitively benefit from the treatment due to active hallucinations, substance use, or other impairments is not suitable for this service. This service is generally performed with only the members, but may include a member and member family/support system group that focuses on the member's diagnosis, management, and recovery based curriculum.

(B) Travel time to and from Alcohol and/or Substance Abuse Services, Skills Development is not compensable. Breaks, lunchtime and times when the ~~client~~ member is unable or unwilling to participate are not compensable. The minimum staffing ratio is fourteen ~~clients~~ members for each AODTP for adults and eight to one for children under the age of eighteen. This service may be performed by an AODTP or a BHRS. In order to develop and improve the ~~client's~~ member's community and interpersonal

functioning and self care abilities, services may take place in settings away from the Outpatient Behavioral Health agency site. When this occurs, the AODTP or BHRS must be present and interacting, teaching, or supporting the defined learning objectives of the ~~client~~ member for the entire claimed time. The service is a fifteen minute time frame and may be billed up to a maximum of 24 units per day for adults and 16 units per day for children. The rate of compensation for this service includes the cost of providing transportation for recipients who receive this service, but do not have their own transportation or do not have other support persons able to provide or who are responsible for the transportation needs. The OHCA transportation program will arrange for transportation for those who require specialized transportation equipment. Residents of ICF/MR facilities and children receiving RBMS in a group home or therapeutic Foster Home are not eligible for this service, unless prior approved by OHCA or its designated agent.

(C) Alcohol and/or Substance Abuse Services, Skills Development are provided utilizing a treatment curriculum approved by an AODTP.

(14) **Alcohol and/or Substance Abuse Services, Skills Development (individual).**

(A) Alcohol and/or Substance Abuse Services, Skills Development (individual) is performed for the same purposes and under the same description and requirements as Alcohol and/or Substance Abuse Services, Skills Development (group) [Refer to paragraph (13) of this subsection]. It is generally performed with only the ~~client~~ member present, but may include the ~~client's~~ member's family or support system in order to educate them about the rehabilitative activities, interventions, goals and objectives.

(B) An AODTP or BHRS must provide this service. Residents of ICF/MR facilities and children receiving RBMS in a group home or therapeutic Foster Home are not eligible for this service, unless prior approved by OHCA or its designated agent. This billing unit is fifteen minutes and no more than six units per day are compensable.

(15) **Medication Training and Support.**

(A) Medication Training and Support is a documented review and educational session by a registered nurse, or physician assistant focusing on a ~~client's~~ member's response to medication and compliance with the medication regimen. The review must include an assessment of medication compliance and medication side effects. Vital signs must be taken including pulse, blood pressure and respiration and documented within the progress notes. A physician is not required to be present, but must be available for consult. Medication Training and Support is designed to maintain the ~~client~~ member on the appropriate level of the least intrusive medications, encourage normalization and prevent hospitalization. Medication Training and Support may not be billed for Medicaid recipients who reside in ICF/MR facilities. One unit is allowed per month per patient without prior authorization.

(B) Medication Training and Support must be provided by a licensed registered nurse, or a physician assistant as a direct service under the supervision of a physician.

(16) **Crisis Intervention Services.**

(A) Crisis Intervention Services are for the purpose of responding to acute behavioral or emotional dysfunction as evidenced by psychotic, suicidal, homicidal or severe psychiatric distress. The crisis situation including the symptoms exhibited and the resulting intervention or recommendations must be clearly documented. Crisis Intervention Services are not compensable for Medicaid recipients who reside in ICF/MR facilities, or who receive RBMS in a group home or Therapeutic Foster home, or recipients who, while in attendance for other behavioral health services, experience acute behavioral or emotional dysfunction. The unit is a fifteen minute unit with a maximum of eight units per month, established mobile crisis response teams can bill a maximum of sixteen units per month, and 40 units each 12 months per recipient.

(B) Crisis Intervention Services must be provided by a MHP.

(17) **Crisis Intervention Services (facility based stabilization).** Crisis Intervention Services (facility based stabilization) are emergency psychiatric and substance abuse services to resolve crisis situations. The services provided are emergency stabilization, which includes a protected environment, chemotherapy, detoxification, individual and group treatment, and medical assessment. Crisis Intervention Services (facility based stabilization) will be under the supervision of a physician aided by a licensed nurse, and will also include MHPs for the provision of group and individual treatments. A physician must be available. This service is limited to providers who contract with or are operated by the ODMHSAS to provide this service within the overall behavioral health service delivery system. Crisis Intervention Services (facility based stabilization) are compensable for child and adult Medicaid recipients. The unit of service is per hour. Providers of this service must meet the requirements delineated in the Oklahoma Administrative Code.

(18) **Program of Assertive Community Treatment (PACT) Services.**

(A) Program of Assertive Community Treatment (PACT) Services are those delivered within an assertive community based approach to provide treatment, rehabilitation, and essential behavioral health supports on a continuous basis to individuals 18 years of age or older with serious mental illness with a self contained multi-disciplinary team. The team must use an integrated service approach to merge essential clinical and rehabilitative functions and staff expertise. This level of service is to be provided only for

persons most clearly in need of intensive ongoing services. Services must satisfy all statutory required program elements as articulated in the Oklahoma Administrative Code 450:55. At a minimum, the services must include:

(i) Assessment and evaluation;

(ii) Treatment planning;

(iii) Crisis intervention to cover psychiatric crisis and drug and alcohol crisis intervention;

(iv) Symptom assessment, management, and individual supportive psychotherapy;

(v) Medication evaluation and management, administration, monitoring and documentation;

(vi) Rehabilitation services;

(vii) Substance abuse treatment services;

(viii) Activities of daily living training and supports;

(ix) Social, interpersonal relationship, and related skills training; and,

(x) Case management services.

(B) Providers of PACT services are specific teams within an established organization and must be operated by or contracted with and must be certified by the ODMHSAS in accordance with 43A O.S. 319 and Oklahoma Administrative Code 450:55. The unit is a per diem inclusive of all services provided by the PACT team. No more than 12 days of service per month may be claimed. Medicaid recipients who are enrolled in this service may not receive other Outpatient Behavioral Health Services except for Crisis Intervention Services (facility based stabilization).

(19) **Behavioral Health Aide.** This service is limited to children with serious emotional disturbance who are in an ODMHSAS contracted systems of care community based treatment program, or are under OKDHS or OJA custody residing within a RBMS Level of care, who need intervention and support in their living environment to achieve or maintain stable successful treatment outcomes. Behavioral Health Aides provide behavior management and redirection and behavioral and life skills remedial training. The behavioral aide also provides monitoring and observation of the child's emotional/behavioral status and responses, providing interventions, support and redirection when needed. Training is generally focused on behavioral, interpersonal, communication, self help, safety and daily living skills.

(A) Behavioral Health Aides must have completed 60 hours or equivalent of college credit to meet the requirement as a BHRS or may substitute one year of relevant employment and/or responsibility in the care of emotionally disturbed children for up to two years of college experience, and:

(i) must have successfully completed the specialized training and education curriculum provided by the ODMHSAS; and

(ii) must be directly and closely supervised by a licensed Mental Health Professional; and

(iii) function under the general direction of the established systems of care team and the current treatment plan.

(B) These services must be prior authorized by OHCA (or its designated agent). The Behavioral Health Aide cannot bill for more than one individual during the same time period.

(20) **Family Support and Training.** Family Support and Training is designed to benefit the Medicaid eligible child experiencing a serious emotional disturbance who is in an ODMHSAS contracted systems of care community based treatment program and who without these services would require psychiatric hospitalization. This service provides the training and support necessary to ensure engagement and active participation of the family in the treatment planning process and with the ongoing implementation and reinforcement of skills learned throughout the treatment process. Child Training is provided to family members to increase their ability to provide a safe and supportive environment in the home and community for the child. This involves assisting the family in the acquisition of knowledge and skills necessary to understand and address the specific needs of the child in relation to their mental illness and treatment; development and enhancement of the families specific problem-solving skills, coping mechanisms, and strategies for the child's symptom/behavior management; assisting the family in understanding various requirements, such as the crisis plan and plan of care process; training on the child's medications or diagnoses; interpreting choice offered by service providers; and assisting with understanding policies, procedures and regulations that impact the child with mental illness while living in the community. Parent Support ensures the engagement and active participation of the family in the treatment planning process and guides families toward taking a proactive role in their child's treatment. Parent Training is assisting the family with the acquisition of the skills and knowledge necessary to facilitate an awareness of their child's needs and the development and enhancement of the family's specific problem-solving skills, coping mechanisms, and strategies for the child's symptom/behavior management. Services are goal directed as identified in the child's individualized plan of care and provided under the direction of a child and family treatment team and are intended to support the family with maintaining the child in the home and community. For the purposes of this service, "family" is defined as the persons who live with or provide care to a person served and may include a parent, spouse, children, relatives, foster family, or in-laws. "Family" does not include individuals who are employed to care for the member.

(A) The family support and training worker must meet the following criteria:

(i) have a high school diploma or equivalent;

(ii) be 21 years of age and have successful experience as a family member of a child or youth with serious emotional disturbance, or a minimum

of 2 years experience working with children with serious emotional disturbance or be equivalently qualified by education in the human services field or a combination of work experience and education with one year of education substituting for one year of experience (preference is given to parents or care givers of child with SED);

(iii) successful completion of Family Support Training according to a curriculum approved by the ODMHSAS prior to providing the service;

(iv) pass OSBI and OKDHS child abuse check as well as adult abuse registry and motor vehicle screens; and

(v) receive ongoing and regular supervision by a person meeting the qualifications of a Mental Health Professional (MHP). A MHP must be available at all times to provide back up, support, and/or consultation.

(B) These services may be retrospectively reviewed by OHCA or its designated agent.

(21) **Community Recovery Support.** Recovery Support is a service delivery role in the ODMHSAS public and contracted provider system throughout the mental health care system where the provider understands what creates recovery and how to support environments conducive of recovery. The role is not interchangeable with traditional staff that usually work from the perspective of their training and/or their status as a licensed mental health provider; rather, this provider works from the perspective of their experiential expertise and specialized credential training. They lend unique insight into mental illness and what makes recovery possible because they are in recovery. Each provider must successfully complete over 40 hours of specialized training, demonstrate integration of newly acquired skills and pass a written exam in order to become credentialed. A code of ethics and continuing education opportunities are components which inform the continued professional development of this provider.

(A) The community/recovery support worker must meet the following criteria:

(i) High School diploma or GED;

(ii) minimum one year participation in local or national member advocacy or knowledge in the area of mental health recovery;

(iii) current or former member of mental health services; and

(iv) successful completion of the ODMHSAS Recovery Support Provider Training and Test to be credentialed.

(B) These services may be retrospectively reviewed by OHCA or its designated agent.

(C) Example of work performed:

(i) Utilizing their knowledge, skills and abilities will:

(I) teach and mentor the value of every individual's recovery experience;

(II) model effective coping techniques and self-help strategies;

(III) assist service recipients in articulating personal goals for recovery; and

(IV) assist service recipients in determining the objectives needed to reach his/her recovery goals.

(ii) Utilizing ongoing training may:

(I) proactively engage members and possess communication skills/ability to transfer new concepts, ideas, and insight to others;

(II) facilitate peer support groups;

(III) assist in setting up and sustaining self-help (mutual support) groups;

(IV) support members in using a Wellness Recovery Action Plan (WRAP);

(V) assist in creating a crisis plan/Psychiatric Advanced Directive;

(VI) utilize and teach problem solving techniques with members;

(VII) teach members how to identify and combat negative self-talk and fears;

(VIII) support the vocational choices of members and assist him/her in overcoming job-related anxiety;

(IX) assist in building social skills in the community that will enhance quality of life. Support the development of natural support systems;

(X) assist other staff in identifying program and service environments that are conducive to recovery; and

(XI) attend treatment team and program development meetings to ensure the presence of the member's voice and to promote the use of self-directed recovery tools.

(iii) Possess knowledge about various mental health settings and ancillary services (i.e., Social Security, housing services, advocacy organizations).

(iv) Maintain a working knowledge of current trends and developments in the mental health field by reading books, journals and other relevant material.

(I) attend continuing education assemblies when offered by or approved by the ODMHSAS's Office of Consumer Affairs; and

(II) develop and share recovery oriented material at member specific continuing education trainings.

(v) Serve by:

(I) providing and advocating for effective recovery oriented services;

(II) assisting members in obtaining services that suit that individual's recovery needs;

(III) informing members about community and natural supports and how to utilize these in the recovery process; and

(IV) assisting members in developing empowerment skills through self-advocacy.

(vi) Develop specific competencies which will enhance their work skills and abilities. Identified tasks include, but are not limited to:

(I) becoming a trained facilitator of Double Trouble in Recovery (DTR);

(II) becoming a trained facilitator of Wellness Recovery Action Plan (WRAP);

(III) pursuing the USPRA credential of Certified Psychiatric Rehabilitation Practitioner (CPRP).

(b) **Prior authorization and review of services requirements.**

(1) **General requirement.**

(A) All Medicaid providers who provide outpatient behavioral health services are required to have the services they provide either prior authorized or retroactively reviewed by a contractor of OHCA.

(i) Private behavioral health providers, ~~and~~ providers identified by the ODMHSAS as contracted providers, FQHCs, CHCs, RHCs, and I/T/U facilities are required to have all services prior authorized with the exception of the three services listed in paragraph (2)(A) of this subsection.

(B) CMHC's, as identified by the ODMHSAS, are required to have all services retroactively reviewed by a contractor of OHCA and must contain the same prior authorization elements required of the private and contracted (ODMHSAS) providers under OAC 317:30-5-241(b)(4)(B)(i).

(2) **Prior authorization and review of services.**

(A) All Medicaid services identified in subsection (a) of this Section must be prior authorized or reviewed as set forth in paragraph (1) of this subsection except for the following services:

(i) Mental Health Assessment by a Non-Physician [see subsection (a)(1) of this Section] or Alcohol and Drug Assessment;

(ii) Mental Health Services Plan Development by a Non-Physician (moderate complexity) [see subsection (a)(2) of this Section] or Alcohol and/or Substance Abuse Services, Treatment Plan Development (moderate complexity); and

(iii) Crisis Intervention Services and Adult Facility Based Crisis Intervention [see subsection (a)(17) and (18) of this Section]. Children's Facility Based Stabilization requires prior authorization.

(B) Prior authorization means the authorization of services prior to services being rendered. Should a provider perform services prior to the authorization, those services are performed at the risk of nonpayment by OHCA.

(3) **Contractor for prior authorization and review of services.** The contractor who performs the services identified in paragraph (1) of this subsection uses its independent medical judgment to perform both the review of services and the prior authorization of services. OHCA does retain final administrative review over both prior authorization and review of services as required by 42 CFR 431.10.

(4) **Prior authorization process.**

(A) **Definitions.** The following definitions apply to the process of applying for an outpatient behavioral health prior authorization.

(i) **"Outpatient Request for Prior Authorization"** means the form used to request the OHCA contractor to approve services.

(ii) **"Authorization Number"** means the number that is assigned per recipient and per provider that authorizes payment after services are rendered.

(iii) **"Initial Request for Treatment"** means a request to authorize treatment for a recipient that has not received outpatient treatment in the last six months.

(iv) **"Extension Request"** means a request to authorize treatment for a recipient who has received outpatient treatment in the last six months.

(v) **"Modification of Current Authorization Request"** means a request to modify the current array or amount of services a recipient is receiving.

(vi) **"Correction Request"** means a request to change a prior authorization error made by OHCA's contractor.

(vii) **"Provider change in demographic information notification"** means a request to change a provider's name, address, phone, and/or fax numbers, or provider identification numbers. Change in demographics will require contractual changes with OHCA. Providers should contact OHCA's Contracts Services Division for more information.

(viii) **"Status request"** means a request to ask the OHCA contractor the status of a request.

(ix) **"Important notice"** means a notice that informs the provider that information is lacking regarding the approval of any prior authorization request.

(x) **"Letter of collaboration"** means an agreement between the recipient and two providers when a recipient chooses more than one provider during a course of treatment.

(B) **Process.** A provider must submit an Initial Request for Treatment, an Extension Request, a Modification of Current Authorization Request, or a Correction Request on a form provided by the OHCA contractor, prior to rendering the initial services or any additional array of services, with the exception of the three services noted in paragraph (2) of this subsection.

(i) These request forms must be fully completed including the following:

(I) pertinent demographic and identifying information;

(II) complete and current Client Assessment Record (CAR) unless another appropriate assessment tool is authorized by contractor;

(III) complete multi axial, Diagnostic and Statistical Manual (DSM) diagnosis using the most current edition;

(IV) psychiatric and treatment history;

(V) if requested by OHCA or their designated agent, service plan with goals, objectives, treatment duration for ICCD certified clubhouses - recovery plan, with goals, steps, and needed supports);

(VI) services requested;

(VII) if requested by OHCA or their designated agent, signature of ~~client~~ member on service plan; and

(VIII) if requested by OHCA or their designated agent, appropriate provider signature on all forms.

(ii) The OHCA contractor may also require supporting documentation for any data submitted by the provider. The request may be denied if such information is not provided within ten calendar days of notification of the Important Notice.

(iii) Failure to provide a complete request form may result in a delay in the start date of the prior authorization.

(C) **Authorization for services.**

(i) Services are authorized by the contractor exercising independent medical judgment based upon the medical data provided by the provider. The medical data provided, including the functional assessment (including frequency, duration and severity of behaviors), diagnosis and other medical history, is of paramount importance. If services are authorized, a treatment course of one to six months will be authorized. The authorization of services is based upon six levels of care for children and five levels of care for adults. The numerically based levels of care are designed to reflect the ~~client's~~ member's acuity as each level of care, in ascending order, provides for more services for the recipient's care. For example, a Level I (adult) designation provides for 1-12 RVU's while a Level II provides for 1-20 RVU's per month. The range of RVU's between the Level I and Level IV for both children and adults is 1 RVU per month to 62 RVU's per month. Other levels of care are known as Exceptional Case, 0-36 months, ICF/MR, and RBMS.

(ii) If the provider requests services beyond the initial prior authorization period, additional documentation is required in the Extension Request.

(D) **Appeals process.** ~~(i)~~ After the contractor issues a decision regarding an Initial Prior Authorization request, an Extension Request, a Modification Request or a Correction Request, the provider has five business days of receipt of the decision to request the contractor to reconsider its decision. The issues which a provider may ask for reconsideration are the number and type of services designated by the contractor and the length of treatment approved by the contractor. The reconsideration process outlined in this subparagraph will end on July 1, 2006. The reasoning or propriety of an Important Notice or a denial based upon insufficient data may not be reconsidered.

~~(ii) If a reconsideration request is made, the contractor's decision is a final decision and notice is sent to the client as required by 42 CFR 431.211. Notice is also sent to the provider. If a reconsideration request is not made, the initial decision of the contractor constitutes the final decision regarding the authorization and notice is sent to the recipient as required by 42 CFR 431.211.~~

~~(iii) In the event a recipient disagrees with the decision by OHCA's contractor, it may appeal the decision regarding the prior authorization under OAC 317:2-1-2. An appeal must commence within 20 calendar days of the prior authorization reconsideration decision (in the event the provider asks for reconsideration) or within 20 days of the initial decision (in the event no reconsideration request is filed).~~

317:30-5-248. Documentation of records

All outpatient behavioral health services must be reflected by documentation in the ~~patient~~ member records.

(1) All assessment and treatment services must include the following:

(A) date;

(B) person(s) to whom services were rendered;

(~~B~~C) start and stop time for each timed treatment session or service;

(~~C~~D) original signature of the therapist/service provider. In circumstances where it is necessary to fax a service plan to someone for review and then have them fax back their signature, this is acceptable; however, the provider must obtain the original signature for the clinical file within 30 days and no stamped or Xeroxed signatures are allowed;

(~~D~~E) credentials of therapist/service provider;

(~~E~~F) specific treatment plan problems(s), goals and/or objectives addressed ~~(these must be identified on master treatment plan)~~;

(~~F~~G) services provided and methods used to address problem(s), goals ~~and~~ and/or objectives;

(~~G~~H) progress or lack of progress made in treatment as it relates to the ~~made toward~~ goals ~~and~~ and/or objectives;

(~~H~~I) ~~patient~~ member (and family, when applicable) response to the session or intervention; ~~and~~

(~~I~~J) any new problem(s), goals and/or objectives identified during the session or service; and

(K) where services were rendered.

(2) In addition to the items listed in (1) of this subsection:

(A) Crisis Intervention Service notes must also include:

(i) a detailed description of the crisis; and

(ii) level of functioning assessment.

(B) For each Group rehabilitative or counseling session a list of participants and facilitating BHRS, MHP, or AODTP must be maintained.

(C) For medication training and support, vital signs must be recorded in the progress note, but are not required on the mental health services plan.

[OAR Docket #06-1010; filed 5-22-06]

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

[OAR Docket #06-1015]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 25. Psychologists
317:30-5-275. [AMENDED]
317:30-5-276. [AMENDED]
317:30-5-278.1. [AMENDED]
(Reference APA WF # 05-38)
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N/A
ANALYSIS:
Psychologist rules are revised to clarify language, add detailed language on allowable services to match them with actual services, establish guidelines for maximum services billed per day/month, and to match language on Documentation of Records with behavioral health policy.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 25. PSYCHOLOGISTS

317:30-5-275. Eligible providers

Payment is made for compensable services to psychologists licensed in the state ~~where they practice~~ in which services are delivered. ~~School psychologists are not reimbursed for services provided in facilities regulated by the Board of Education, and reimbursement is not made for the services of a psychologist~~ Psychologists employed in State and Federal Agencies, who ~~is~~ are not permitted to engage in private practice, cannot be reimbursed for services as an individually contracted provider. Each psychologist must have a current contract with the Oklahoma Health Care Authority (OHCA).

317:30-5-276. Coverage by category

Payment is made to psychologists with a license to practice in the state where the service is performed or to practitioners who have completed education requirements and are under current board approved supervision to become licensed, as set forth in this section.

(1) **Adults.** There is no coverage for adults for services by a psychologist.

(2) **Children.** Coverage for children includes the following:

(A) Psychiatric Diagnostic Interview Examination (PDIE). The interview and assessment is defined as a face-to-face interaction with the client. Psychiatric diagnostic interview examination includes a history, mental status, and a disposition, and may include communication with family or other sources, ordering and medical interpretation of laboratory or other medical diagnostic studies. Only one PDIE is allowable per provider unless there has been a break in service over a six month period.

(~~A~~B) Individual and/or Interactive psychotherapy in an outpatient setting including an office or clinic. The services may be performed at the residence of the recipient if it is demonstrated that it is clinically beneficial, or if the client is unable to go to a clinic or office. Individual psychotherapy is defined as a one to one treatment using a widely accepted modality or treatment framework suited to the individual's age, developmental abilities and diagnosis. It may include specialized techniques such as biofeedback or hypnosis. It is a service personally rendered to an individual by a licensed psychologist.

(~~B~~C) Family ~~Therapy~~ Psychotherapy is performed in an outpatient setting limited to an office, clinic, or client residence. Family therapy is a face-to-face interaction between a therapist and the patient/family to facilitate emotional, psychological or behavioral changes and promote communication and understanding. Family therapy must be provided for the benefit of a Medicaid eligible child as a specifically identified component of an individual treatment plan.

(~~C~~D) Group and/or Interactive Group ~~therapy~~ psychotherapy in an outpatient setting must be performed in the ~~psychologists'~~ psychologist's office, ~~or~~ clinic, or other confidential setting. Group therapy is a face to face interaction between a therapist and two or more unrelated patients to facilitate emotional, psychological, or behavioral changes. All group therapy records must indicate group size. Maximum total group size is eight patients. Group therapy must be provided for the benefit of a Medicaid eligible child four years of age or older as a specifically identified component of an individual treatment plan. Group therapy is billed per session. No more than one per patient session is allowed per day.

(~~D~~E) Psychological, Developmental, Neuropsychological, Neurobehavioral ~~testing~~ Testing is clinically utilized when an accurate diagnosis and determination of treatment needs cannot be made otherwise. ~~limited to four~~ Four hours of testing per patient (over the age of two), per provider is allowed without prior authorization each ~~12 months~~ calendar year. In ~~exceptional~~ circumstances where it is determined that further testing is medically necessary, an additional four hours may be prior authorized by the OHCA or designated agent. In circumstances where there is a clinical need for specialty testing, then more hours of testing can be authorized. Any testing performed for a child under three must be prior authorized. Testing units must be billed on the date the actual testing, interpretation, scoring, and reporting is performed.

(~~E~~F) Payment for therapy services provided by a psychologist is limited to four encounters per month without prior authorization. An encounter is defined as one hour of individual therapy, one hour of family therapy, or one group therapy session. The four encounters can be any combination of the treatment options. ~~Any services which exceed these limitations must~~ In circumstances where it is determined that further sessions are medically necessary, then more sessions can be prior authorized by the Oklahoma Health Care Authority or designated agent. A maximum of 8 hours of therapy and testing services per day per provider are allowed. A child who is being treated in an acute or residential inpatient setting can receive separate Psychological services as the inpatient per diem is for "non-physician" services only. A child receiving Residential Behavioral Management in a foster home, also known as therapeutic foster care, or a child receiving Residential Behavioral management in a group home, also known as therapeutic group home, may not receive individual, group or family counseling or psychological testing unless prior authorized by the OHCA or its designated agent.

(3) **Home and Community Based Waiver Services for the Mentally Retarded.** All providers participating in the Home and Community Based Waiver Services for the mentally retarded program must have a separate contract with this Authority to provide services under this program. All services are specified in the individual's plan of care.

(4) **Individuals eligible for Part B of Medicare.** Payment is made utilizing the Medicaid allowable for comparable services.

317:30-5-278.1. Documentation of records

All psychological services must be reflected by documentation in the patient records.

(1) ~~Individual, group and family counseling~~ All assessment and treatment services must include the following:

(A) date;

(B) start and stop time for each timed treatment session;

(C) signature of the ~~therapist~~ provider;

(D) credentials of ~~therapist~~ provider;

(E) specific ~~concerns, issues or problem~~ problem(s), goals and/or objectives addressed;

(F) methods used to address problem(s), goals and objectives;

(G) progress made toward goals and objectives;

(H) patient response to the session or intervention; and

(I) any new problem(s), goals and/or objectives identified during the session.

(2) For each Group psychotherapy session, a list of participants must be maintained.

(~~2~~3) Psychological testing will be documented by report which should include at a minimum, the objectives for testing, the tests administered, the results/conclusions and interpretation of the tests, and recommendations for treatment and/or care based on testing results and analysis.

[OAR Docket #06-1015; filed 5-22-06]

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

[OAR Docket #06-1000]

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PERMANENT final adoption

RULES:

Subchapter 5. Individual Providers and Specialties

Part 41. Family Support Services

317:30-5-412. [AMENDED]

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(Reference APA WF # 05-22)
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N/A
ANALYSIS:
Developmental Disabilities Services Division Family Support Services rules are revised to increase the annual limits on expenditures for Individual and Group Family Training Services from $5000 to $5500 per service recipient. Since the implementation of Section 1175.6b of Title 22 of the Oklahoma Statutes, the Oklahoma Department of Human Services (OKDHS) has seen an increase in a challenging and dangerous population coming into the community program via the courts and the Oklahoma Department of Mental Health and Substance Abuse Services. These individuals have pending criminal charges but have been determined to be incompetent due to mental retardation. If the court finds that the individual is not dangerous, the court may suspend the criminal proceedings and refer the person to OKDHS for services. The Oklahoma Department of Human Services, who pays the state share for these services, has requested this rule change as residential staff who care for these individuals need additional training in order to meet the needs of these clients. Revisions are needed to increase the annual expenditure limits for Individual and Group Family Training Services.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 41. FAMILY SUPPORT SERVICES

317:30-5-412. Description of services

Family Support Services include the following:

(1) **Transportation services.** Transportation services are provided in accordance with OAC 317:40-5-103.

(2) **Adaptive equipment services.** Adaptive equipment (assistive technology) services are provided in accordance with OAC 317:40-5-100.

(3) **Architectural modification.** Architectural modification services are provided in accordance with OAC 317:40-5-101.

(4) **Family training.**

(A) **Minimum qualifications.** Training providers must hold current licensure as a clinical social worker, psychologist, professional counselor, psychiatrist, registered nurse, nutritionist/dietitian, physical therapist, occupational therapist or speech therapist. Training may also be provided by other local or state agencies whose programs have been approved by the Developmental Disabilities Services Division (DDSD) Director of Training.

(B) **Description of services.** Family Training Services include instruction in skills and knowledge pertaining to the support and assistance of persons with developmental disabilities provided to individuals and natural, adoptive or foster families of eligible individuals age six and older. Services are intended to allow families to become more proficient in meeting the needs of eligible individuals. Services are provided in any setting in which the individual/family resides and/or the provider conducts business and may be provided in either group (2-15 persons) or individual formats.

(C) **Coverage limitations.** Payment rates and coverage limitations for family training are as follows:

(i) Description: Individual Family Training; ~~Payment Rate: 95% of Billed Charges;~~ Limitation: ~~$5,000~~ $5,500 each 12 months.

(ii) Description: Group Family Training; ~~Payment Rate: 95% of Billed Charges;~~ Limitation: ~~$5,000~~ $5,500 each 12 months.

(5) **Family counseling.**

(A) **Minimum qualifications.** Counseling providers must hold current licensure as a clinical social worker, psychologist or professional counselor.

(B) **Description of services.** Family Counseling Services include counseling in emotional and social issues provided to eligible individuals age six and older and their natural, adoptive or foster families. Services are intended to maximize individual's/family's emotional/social adjustment and well-being. Services are rendered in any setting in which the individual/family resides or the provider's office and may be provided in either group (six person maximum) or individual formats.

(C) **Coverage limitations.** Payment rates and coverage limitations for family counseling are as follows:

(i) Description: Individual Family Counseling; Unit: 15 minutes; Limitation: 400 units each 12 months.

(ii) Description: Group Family Counseling; Unit: 30 minutes; Limitation: 225 units each 12 months.

(6) **Specialized medical supplies.**

(A) **Minimum qualifications.** Specialized medical equipment providers must meet all applicable state and local requirements for licensure and/or certification.

(B) **Description of services.** Specialized medical supplies include supplies specified in the plan of care, which enable individuals to increase their abilities to perform activities of daily living. This service also includes the purchase of ancillary supplies not available under Oklahoma's Title XIX State Plan and excludes those items which are not of direct medical and remedial benefit to the individual. All items shall meet applicable standards of manufacture, design and installation. Supplies include, but are not limited to:

(i) prescriptions in excess of Medicaid limitations;

(ii) adult briefs;

(iii) nutritional supplements;

(iv) supplies needed for tracheotomy/respirator/ventilator care; and

(v) supplies for decubitus care.

(C) **Coverage limitations.** Specialized medical services are billed using the appropriate HCPC Code. Individual limits are specified in each recipient's IHP. All services require prior authorization.

[OAR Docket #06-1000; filed 5-22-06]

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

[OAR Docket #06-1019]

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Part 67. Behavioral Health Case Management Services for Individuals under 21 Years of Age
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317:30-5-597. through 317:30-5-598. [REVOKED]
317:30-5-599. [AMENDED]
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Case Management Services for Under 21 rules are revised to use language consistent with the approved Medicaid state plan and require site specific provider numbers. Revisions add specific documentation of records requirements to match those of other behavioral health providers. Other revisions clarify procedures to providers and remove language that was previously relocated to the provider billing manual.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 67. BEHAVIOR HEALTH CASE MANAGEMENT SERVICES FOR INDIVIDUALS UNDER 21 YEARS OF AGE

317:30-5-595. Eligible providers

Services are provided by case management agencies established for the purpose of providing case management services.

(1) **Provider agency requirements.** The agency must demonstrate its capacity to deliver behavioral health case management services in terms of the following items:

(A) On or after July 1, 2003, any organization seeking to be a provider of behavioral health case management services not having a valid Memorandum of Agreement as an OHCA case management provider, or a completed OHCA Case Management

Provider Application with ~~DMHSAS~~ ODMHSAS, must demonstrate appropriate JCAHO, CARF, COA, or AOA accreditation. Beginning July 1, 2004, the ~~DMHSAS~~ ODMHSAS review, in accordance with ~~DMHSAS/OHCA~~ ODMHSAS/OHCA Interagency Agreement, will no longer qualify any organization to be a provider of behavioral health case management services. As set forth in the current ~~DMHSAS/OHCA~~ ODMHSAS/OHCA Interagency Agreement, reviews conducted by ~~DMHSAS~~ ODMHSAS will be limited to determinations that applications for initial and/or continued behavioral health case management provider status meets standards approved by OHCA in accordance with protocol approved by OHCA.

(B) On or after July 1, 2004, OHCA will require agencies to have accreditation appropriate to behavioral health case management from JCAHO, CARF, COA, or AOA, and maintain the standards of the accreditation at all times.

(C) OHCA reserves the right to obtain a copy of any accreditation audit and/or site visit reports from the provider and/or the accreditation agency.

(D) Agencies that are eligible to contract with OHCA to provide behavioral health case management services to eligible individuals under the age of 21 must be community based with a history of serving seriously emotionally disturbed (SED) children and their families.

(E) The agency must be able to demonstrate the ability to develop and maintain appropriate patient records including but not limited to assessments, service plans, and progress notes. The financial records should include development of a management system which tracks costs associated with worker activities.

(F) An agency must agree to follow the Oklahoma Department of Mental Health and Substance Abuse Services established behavioral health case management rules found in OAC 450:50.

(G) An agency's behavioral health case management staff must serve the target group on a 24 hour on call basis.

(H) An agency must agree to comply with applicable Federal and State regulations, as set forth in the contractual agreement.

(I) Agencies will be required to maintain the Code of Federal Regulations (CFR) requirements as required by the Centers for Medicare and Medicaid Services (CMS) at all times.

(J) ~~Hospitals who are providers of inpatient psychiatric acute or residential services for children are ineligible to contract with OHCA to provide children's behavioral health case management services.~~ Each site operated by a case management facility must have a separate provider number. A site is defined as an office, clinic, or other business setting where case management services are routinely performed. When services are rendered at the patient's residence, a school, or an appropriate community based setting, a site is determined according to where the professional staff perform administrative duties and where the patient's chart and other records are kept. Failure to obtain and utilize site specific provider numbers will result in disallowance of services.

(2) **Provider types.**

(A) **Public facilities.** Public and ODMHSAS Contracted Programs Facilities (Public facilities) are the regionally based Community Mental Health Centers. ODMHSAS contracted programs are providers that have a contract with the ODMHSAS to provide Mental Health, Substance Abuse, and Case Management Treatment Services.

(B) **Private facilities.** Private facilities are those facilities who contract directly with the Oklahoma Health Care Authority to provide case management services.

(3) **Service provider education and experience requirements before July 1, 2001.** For case management services to be compensable by Medicaid, the case manager performing the service must maintain current case management certification from the Oklahoma Department of Mental Health and Substance Abuse Services. For those case managers who are certified on or before July 1, 2001, the following education and experience requirements apply:

(A) Associate's degree in a related human service field, OR;

(B) Two years of college education plus two years or more human service experience, OR;

(C) Bachelor's degree in a related human service field plus one year or more human service experience, OR;

(D) Master's degree in a related human service field.

(~~2~~4) **Service provider education and experience requirements after July 1, 2001.** For behavioral health case management services to be compensable by Medicaid, the case manager performing the service must have and maintain a current children's behavioral health case manager certification from the Oklahoma Department of Mental Health and Substance Abuse Services (refer to OAC 450:50) and have a:

(A) Bachelor's or Master's degree in a mental health related field including, but not limited to psychology, social work, occupational therapy, family studies, sociology, criminal justice, school guidance and counseling; OR

(B) A current license as a registered nurse in Oklahoma with experience in behavioral health care; OR

(C) Certification as an alcohol and drug counselor allowed to provide substance abuse case management to those with alcohol and/or other drug dependencies or addictions as a primary or secondary DSMIV Axis I diagnosis.

317:30-5-596. Coverage by category

Payment is made for behavioral health case management services as set forth in this Section.

(1) **Adults.** Coverage for adults is found in OAC 317:30-5-586.

(2) **Children.** Payment is made for services to persons under age 21 as follows:

(A) **Description of behavioral health case management services.** Services under behavioral health case management are not comparable in amount, duration and scope. The target group for ~~initial~~ behavioral health case management services are persons under age 21 who are in imminent risk of ~~hospitalization~~ out-of-home placement for psychiatric or substance abuse reasons or are ~~receiving treatment~~ in ~~an inpatient psychiatric hospital and nearing discharge~~ out-of-home placement due to psychiatric or substance abuse reasons. All behavioral health case management services will be subject to medical necessity criteria.

(i) Behavioral health case management services are provided to assist eligible individuals in gaining access to needed medical, social, educational and other services essential to meeting basic human needs. The behavioral health case manager provides referral, linkage and advocacy on behalf of the child to gain access to appropriate community resources. The behavioral health case manager must monitor the progress in gaining access to services and continued appropriate utilization of necessary community resources. Behavioral case management is designed to promote recovery, maintain community tenure, and to assist individuals in accessing services for themselves following the case management guidelines established by the Oklahoma Department of Mental Health and Substance Abuse Services. In order to be compensable, the service must be performed utilizing the ~~DMHSAS~~ ODMHSAS Strengths Based model of case management. This model of case management assists individuals in identifying and securing the range of resources, both environmental and personal, needed to live in a normally interdependent way in the community. The focus for the helping process is on strengths, interests, abilities, knowledge and capacities of each person, not on their diagnosis, weakness or deficits. The relationship between the service recipient and the behavioral health case manager is characterized by mutuality, collaboration, and partnership. Helping activities are designed to occur primarily in the community, but may take place in the behavioral health case manager's office, if more appropriate. The community based behavioral health case management agency will coordinate with the child and family by phone or face-to-face, to identify immediate needs for return to home/community no more than ~~two business days~~ 72 hours after notification that the family requests case management services. For children discharging from an out of home placement, the out of home agency/placement is responsible for scheduling an appointment with a case management agency for services post discharge. The case manager will ~~conduct a face-to-face follow-up appointment~~ make contact with the child and family within 72 hours of discharge, then conduct a face-to-face follow-up appointment within 7 days. The case manager will provide linkage/referral to physicians/medication services, counseling services, rehabilitation and/or support services as described in the case management service plan. During the follow-up phase of these referrals or links, the behavioral health case manager will provide aggressive outreach if appointments or contacts are missed within ~~24 hours~~ 2 business days of the missed appointments. Community/home based case management to assess the needs for services will be scheduled as reflected in the case management service plan, but not less than one time per month. The recipient/parent/guardian has the right to refuse behavioral health case management and cannot be restricted from other services because of a refusal of behavioral health case management services.

(ii) An eligible recipient/parent/guardian will not be restricted and will have the freedom to choose a behavioral health case management provider as well as providers of other medical care.

(iii) In order to ensure that behavioral health case management services appropriately meet the needs of the child and family and are not duplicated, behavioral health case management activities will be provided in accordance with an individualized service plan.

(iv) The service plan must include goals and objectives that are measurable and time limited and must describe the specific activities to be performed. Behavioral health case management service plan development is compensable if the time is spent communicating with the child, parent/guardian/family member or provider of other services. The plan must be developed with participation by, as well as, reviewed and signed by the child (only if over 16 years of age), the parent or guardian, the behavioral health case manager, and a mental health professional as defined in OAC 317:30-240(c).

(v) Medicaid reimbursable behavioral health case management services include the following:

(I) Gathering necessary psychological, educational, medical, and social information for the purpose of service plan development.

(II) Face-to-face meetings with the child and/or the parent/guardian/family member for

the implementation of activities delineated in the service plan.

(III) Face-to-face meetings with treatment or service providers, necessary for the implementation of activities delineated in the service plan.

(IV) Supportive activities such as non face-to-face communication with the child and/or parent/guardian/family member or the behavioral health case manager's travel time to and from meetings for the purpose of development or implementation of the service plan.

(V) Non face-to-face communication with treatment or service providers necessary for the implementation of activities delineated in the service plan.

(vi) Medicaid reimbursable behavioral health case management does not include the following activities:

(I) Physically escorting or transporting a child or family to scheduled appointments or staying with the child during an appointment; or

(II) Managing finances; or

(III) Providing specific services such as shopping or paying bills; or

(IV) Delivering bus tickets, food stamps, money, etc.; or

(V) Counseling, rehabilitative services, psychiatric assessment, or discharge planning; or

(VI) Filling out forms, applications, etc., on behalf of the child when the child is not present; or

(VII) Filling out Medicaid forms, applications, etc., or;

(VIII) Mentoring or tutoring; or

(IX) Provision of behavioral health case management services to the same family by two separate behavioral health case management agencies.

(B) The following Medicaid recipients are not eligible for behavioral health case management services:

(i) Children/families for whom behavioral health case management services are available through ~~DHS/OJA~~ OKDHS/OJA staff without special arrangements with ~~DHS~~ OKDHS, OJA, and OHCA;

(ii) Children receiving services in Residential Behavior Management Services (RBMS) in a foster care or group home setting;

(iii) Residents of ICF/MR and nursing facilities; and

(iv) Children receiving Home and Community Based Waiver services.

(3) **Individuals eligible for Part B of Medicare.** Case management services provided to Medicare eligible recipients should be filed directly with the fiscal agent.

317:30-5-596.1. Prior authorization

(a) Prior authorization of behavioral health case management services is mandatory. The provider must request prior authorization from the OHCA, or its designated agent.

(b) Medicaid recipients who are eligible for services will be considered for prior authorization after receipt of complete and appropriate information submitted by the provider in accordance with the guidelines for behavioral health case management services developed by OHCA or its designated agent. Based on diagnosis, functional assessment, history and other Medicaid services being received, the Medicaid recipient may be approved to receive case management services. Medicaid recipients who reside in nursing facilities, residential behavior management services, group or foster homes, or ICF/MR's may not receive Medicaid compensable case management services. A Medicaid recipient may be approved for a time frame of one to six months. The OHCA, ~~(~~or its designated agent~~)~~ will review the initial request in accordance with the guidelines for prior authorization in the Outpatient Behavioral Health ~~Case Management~~ Service Provider Manual. An initial request for case management services requires the provider to submit specific documentation to OHCA, or its designated agent. A fully developed service plan is not required at the time of initial request. The provider will be given a time frame to develop the service plan while working with the child and his/her family and corresponding units of service will be approved prior to the completion of the service plan. The provider will be required to engage with the child/family within 72 hours of discharge from an inpatient psychiatric hospital and/or within 72 hours of receiving the request for services from the family or other community resource. The expectation is for the behavioral health case manager to immediately engage with the child/family to prevent hospital readmission or other out-of-home placement, and ~~to~~ refer to needed community resources. ~~Extension~~ Prior authorization requests will be reviewed by licensed ~~master's prepared therapists~~ mental health professionals (Licensed Clinical Social Workers, Licensed Professional Counselors, Licensed Marriage and Family Therapists, Licensed Behavioral Practitioners, and Licensed Alcohol and Drug Counselors) ~~with experience in behavioral health care~~, Licensed Registered Nurses with experience in behavioral health care, Psychiatrists (M.D. and D.O.), or Psychologists possessing current state licensure.

(c) ~~A prior authorization decision may be appealed by the provider or client if filed within five working days of receipt of the decision. The first level of appeal is to request a reconsideration from OHCA's designated agent. If the appeal is not satisfactorily resolved during reconsideration, the provider or client may submit an appeal to the OHCA through its standard grievance process (refer to OAC 317:2).~~ In the event that a recipient disagrees with the decision by OHCA's contractor, it receives an evidentiary hearing under OAC 317:2-1-2(a). The recipient's request for such an appeal must commence within 20 calendar days of the initial decision. Providers may access a reconsideration process by OHCA's designated agent, whose decision is final. After the contractor issues a decision regarding an Initial Prior Authorization request, an Extension Request, a Modification Request or a Correction Request, the provider has

five business days of receipt of the decision to request the contractor to reconsider its decision. The issues which a provider may ask for reconsideration are the number and type of services designated by the contractor and the length of treatment approved by the contractor. The reasoning or propriety of an Important Notice or a denial based upon insufficient data may not be reconsidered. The reconsideration process will end on July 1, 2006.

(d) Providers seeking prior authorization will follow OHCA's or its designated agent's prior authorization process guidelines for submitting behavioral health case management requests on behalf of the Medicaid recipient.

317:30-5-596.2. Direct and Indirect Case Management services

Case management services are provided using one of two categories of service.

(1) **Direct case management services.** For Direct case management services the behavioral health case manager performs face to face interactions with ~~either~~ the child and/or the child's parent/guardian/family member or service providers necessary for the implementation of activities delineated in the service plan. Service plan development, when performed face to face, is considered direct behavioral health case management.

(2) **Indirect behavioral health case management.** For Indirect case management services the behavioral health case manager performs non face to face services related to the child's case, excluding those activities cited as non Medicaid compensable in OAC 317:30-5-596(2)(vi). Examples of indirect behavioral health case management are phone calls, monitoring of client progress and the case manager's travel time to or from activities necessary for the implementation of the service plan. Other indirect services may be communication through letters, memorandums or e-mail to treatment or other service providers necessary for the implementation of activities delineated in the service plan. Electronic communication documentation must be encrypted and meet HIPAA guidelines.

317:30-5-597. Reimbursement [REVOKED]

~~(a) Reimbursement for case management services is determined using a Relative Value Unit system (RVU) fee schedule. A monetary conversion factor (CF) will be used to determine the overall level of payments to providers. The conversion factor uses the 1996 baseline payment data, adjusted to **reduce** Medicaid's payment of fixed costs. The formula for calculating the rates is as follows: RVU x CF = Rate.~~

~~(b) Each unit of case management is provided using one of two categories of service. These categories are Direct and Indirect Case Management services. The rate for Direct case management service is the rate described in (a) of this Section. The rate for Indirect case management service is based on the Direct case management rate less a provider negotiated amount.~~

~~(c) Case management services are reimbursed using a 15 minute unit of service.~~

317:30-5-598. Billing [REVOKED]

~~(a) Billing for case management services will be on Form HCFA 1500. Claims should not be submitted until Medicaid eligibility of the individual has been determined. However, a claim must be received by OHCA within 12 months of the date of service. If the eligibility of the individual has not been determined after ten months from the date of service, a claim should be submitted in order to assure that the claim is timely filed and reimbursement from Medicaid funds can be made should the individual be determined eligible at a later date.~~

~~(b) Claims for prior authorized services must include a prior authorization number in Block 23 of the HCFA 1500.~~

317:30-5-599. Documentation of records

All behavioral health case management services rendered must be reflected by documentation in the records. In addition to a complete behavioral health case management service plan, documentation of each session must include but is not limited to:

~~(1) goals and objectives addressed,~~

~~(2) progress toward goals and objectives,~~

~~(3) start and stop times,~~

~~(4) date,~~

~~(5) staff signature and credentials, and at least one of the following:~~

~~(A) specific activities performed by the behavioral health case manager on behalf of the child related to linkage, referral, or monitoring;~~

~~(B) specific activities related to the monitoring of the child's progress on the goals and objectives contained in the service plan; and~~

~~(C) specific activities necessary for service plan development.~~

(1) date;

(2) person(s) to whom services were rendered;

(3) start and stop time for each service;

(4) original signature of the service provider (in circumstances where it is necessary to fax a service plan to someone for review and then have them fax back their signature, this is acceptable; however, the provider needs to obtain the original signature for the clinical file within 30 days. No stamped or Xeroxed signatures are allowed.)

(5) credentials of service provider;

(6) specific service plan problem(s), goals and/or objectives addressed;

(7) specific activities performed by the behavioral health case manager on behalf of the child related to advocacy, linkage, referral, or monitoring used to address problem(s), goals and/or objectives;

(8) progress or lack of progress made towards goals and/or objectives;

(9) client (and family, when applicable) response to the services;

(10) any new service plan problem(s), goals and/or objectives identified during the service;

(11) where services were rendered; and

(12) specific activities necessary for service plan development.

[OAR Docket #06-1019; filed 5-22-06]

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

[OAR Docket #06-1014]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 73. Early Intervention Services
317:30-5-640. through 317:30-5-641.1. [AMENDED]
317:30-5-641.2. [REVOKED]
317:30-5-641.3. [AMENDED]
317:30-5-642. [REVOKED]
317:30-5-644. [AMENDED]
(Reference APA WF # 05-37)
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ANALYSIS:
Rules for the Early Intervention program are revised to add Certified Child Development Specialists as providers for Behavioral/development counseling. Child Development Specialists (CDSs) are regularly utilized in the Early Intervention program. They are Master prepared individuals and are certified for this profession in Oklahoma. The rules currently allow for the Development Screening/Testing that is performed by CDSs, but not for any follow-up counseling intervention that may be performed. In addition, rules are revised to reflect current terminology and language for Early Intervention Services.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 73. EARLY INTERVENTION SERVICES

317:30-5-640. General provisions and eligible providers

(a) **General provisions.**

(1) Payment is made to eligible providers certified by the Oklahoma State Department of Education (OSDE) or the Oklahoma State Department of Health (OSDH) for the delivery of Early Periodic Screening, Diagnosis and Treatment (EPSDT) services to infants and toddlers ~~aged 0-3~~ from birth up to their third birthday with developmental disabilities, pursuant to the requirements of the Individuals with Disabilities Education Improvement Act~~, Amendments of 1997~~ (IDEIA) of 2004, Public Law 108-446 Part C, and subsequent amendments.

(2) EPSDT services are comprehensive child-health services, designed to ensure the availability of, and access to, required health care resources and to help parents and guardians of Medicaid eligible children use these resources. Effective EPSDT services assure that health problems are diagnosed and treated early before they become more complex and their treatment more costly. The ~~State Department of Education~~ OSDE and the ~~State Department of Health~~ OSDH play a significant role in educating parents about ~~all~~ EPSDT services ~~available through the EPSDT program~~.

(3) ~~The receipt of an identified EPSDT screen makes the Medicaid child eligible for all necessary follow-up care that is within the scope of the Medicaid program.~~ An Individualized Family Services Plan (IFSP) entitles the Medicaid eligible child to medically necessary and appropriate health related EPSDT treatment services. ~~Federal regulations require that diagnosis and treatment be provided for conditions identified during a screening whether or not they are covered under the Authority's current program.~~ Such services must be allowable under federal Medicaid regulations and must be necessary to ameliorate or correct defects of physical or mental illnesses or conditions.

(4) Federal regulations require that the State set standards and protocols for each component of EPSDT services. The standards must provide for services at intervals that meet reasonable standards of medical and dental practice. The standards must also provide for EPSDT services at other intervals as medically necessary to determine the existence of certain physical and mental illnesses or conditions. Medicaid providers who offer EPSDT screenings must assure that the screenings they provide meet the minimum standards for those services in order to be reimbursed at the level established for EPSDT services.

~~(5) To assure full payment for the EPSDT screening, providers must perform and document all necessary components of the screening examination as defined under Child Health Centers at OAC 317:30-5-198.~~

(b) **Eligible providers.** Eligible providers are state education and health departments and their contract agencies as designated in the State's Plan for Early Intervention Services, developed in response to the requirements of Part C of the ~~Individuals with Disabilities Education Act (IDEA) Amendments of 1997~~ IDEIA and who are enrolled as eligible Medicaid providers. A completed contract to provide EPSDT health related services ~~for infants and toddlers aged 0-3 with developmental disabilities~~ must be submitted to the Oklahoma Health Care Authority (OHCA). Providers must have a Medicaid provider agreement in order to receive Medicaid reimbursement.

317:30-5-640.1. Periodicity schedule

(a) ~~The Oklahoma Medicaid program adopted the recommendations of the American Academy of Pediatrics for screening services, which include at least the following:~~ A complete description of services to be provided at each screening interval is outlined in the Periodicity Schedule found at OAC 317:30-3-65.2.

~~(1) Six screenings during the first year of life;~~

~~(2) Two screenings in the second year;~~

~~(3) One screening yearly for ages two through five years~~

~~(4) One screening every other year for ages six through twenty years.~~

(b) Medicaid eligible children enrolled in ~~*SoonerCare*~~ SoonerCare are referred to their ~~*SoonerCare*~~ SoonerCare provider for ~~services~~ EPSDT screens. In cases where the ~~*SoonerCare*~~ SoonerCare provider authorizes the qualified provider of health related services ~~for infants and toddlers aged 0-3 with developmental disabilities~~ to perform the screen or fails to schedule an appointment within three weeks and a request has been made and documented by the staff of the ~~Department of Education~~ OSDE or ~~Department of Health~~ OSDH, or the latter's contractors, the ~~Department of Health~~ OSDH may then furnish the EPSDT child health screening and bill it as a fee-for-service activity. Results of the child health screening are forwarded to the child's ~~*SoonerCare*~~ SoonerCare provider.

317:30-5-641. Coverage by category

Payment is made for early intervention services as set forth in this Section.

(1) **Adults.** There is no coverage for services rendered to adults.

(2) **Children.** Payment is made for compensable services rendered by the ~~State Department of Health~~ OSDH and its contractors, pursuant to the State's plan for Early Intervention services ~~to infants and toddlers aged 0-3 with developmental disabilities~~ required under Part C of the ~~Individuals with Disabilities Education Act (IDEA), Amendments of 1997~~ IDEIA.

(A) **Child health screening examination.** An initial screening may be requested by the family of an eligible individual at any time and must be provided without regard to whether the individual's age coincides with the established periodicity schedule. Coordination - referral is made to the ~~*SoonerCare*~~ SoonerCare provider to assure at a minimum, that periodic screens are scheduled and provided in accordance with the periodicity schedule following the initial screening.

(B) **Child health encounter (EPSDT partial screen).** The child health encounter (the EPSDT partial screen) may include a diagnosis and treatment encounter, a follow-up health encounter, or a home visit. A child health encounter may include:

(i) child health history,

(ii) physical examination,

(iii) developmental assessment,

(iv) nutrition assessment and counseling,

(v) social assessment and counseling,

(vi) indicated laboratory and screening tests,

(vii) screening for appropriate immunizations,

(viii) health counseling, and

(ix) treatment of common childhood illness and conditions.

(C) **Hearing and Hearing Aid evaluation.** Hearing ~~evaluation includes pure tone air, bone and speech audiometry provided by a state licensed audiologist who:~~ evaluations must meet guidelines found at OAC 317:30-5-675 and OAC 317:30-5-676.

~~(i) holds a certificate of clinical competence from the American Speech and Hearing Association (ASHA); or~~

~~(ii) has completed the equivalent educational requirements and work experience necessary for the certificate; or~~

~~(iii) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.~~

(D) **Audiometry test.** Audiometric test (Immittance [Impedance] audiometry or tympanometry) includes bilateral assessment of middle ear status and reflex studies (when appropriate) provided by a state licensed audiologist who:

(i) holds a certificate of clinical competence from ASHA; or

(ii) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(E) **Ear impression (for earmold).** Ear impression (for earmold) includes taking impression of client's ear and providing a finished earmold which is used with the client's hearing aid provided by a state licensed audiologist who:

(i) holds a certificate of clinical competence from ASHA; or

(ii) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(iii) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(F) **Speech language evaluation.** Speech language evaluation must be provided by a state-licensed speech language pathologist who~~:~~ meets the guidelines found at OAC 317:30-5-675.

~~(i) holds a certificate of clinical competence from ASHA; or~~

~~(ii) has completed the equivalent educational requirements and work experience necessary for the certificate; or~~

~~(iii) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.~~

(G) **Physical therapy evaluation.** Physical therapy evaluation must be provided by a State licensed physical therapist.

(H) **Occupational therapy evaluation.** Occupational therapy evaluation must be provided by a State licensed occupational therapist.

(I) **Psychological evaluation and testing.** Psychological evaluation and testing must be provided by State-licensed, board certified, psychologists ~~or school psychologists certified by the State Department of Education (SDE)~~.

(J) **Vision testing.** Vision **testing** examination must be provided by a State licensed Doctor of Optometry (O.D.) or licensed physician specializing in **ophthalmology** (M.D. or D.O.). At a minimum, vision services include diagnosis and treatment for defects in vision.

(K) ~~**Child guidance treatment**~~ **Treatment encounter.** A ~~child guidance~~ treatment encounter may occur through the provision of individual, family or group treatment services to infants and toddlers who are identified as having specific disorders or delays in development, emotional or behavioral problems, or disorders of speech, language, vision**,** or hearing. These types of encounters are initiated following the completion of a diagnostic encounter and subsequent development of the Individual Family Services Plan (IFSP), and may include the following:

(i) **Hearing and Vision Services.** These services include assisting the family in managing the child's vision and/or hearing disorder such as auditory training, habilitation training, communication management, orientation and mobility, and counseling the family. This encounter is designed to assist children and families with management issues that arise as a result of hearing and/or vision loss. These services are usually provided by vision impairment teachers or specialists and orientation specialists, and mobility specialists. These services may be provided in the home or community setting, such as a specialized day care center. Hearing services must be provided by:

(I) a State licensed, Master's Degree, ASHA certified audiologist; or

(II) a State licensed, Master's degree, ASHA certified speech language pathologist; or

(III) a speech therapist working under the direction of a State licensed ASHA certified speech language pathologist; or

(IV) an audiologist or speech language pathologist who has completed the equivalent educational requirements and work experience necessary for the certificate; or

(V) has completed the academic program and is acquiring supervised work experience to qualify for the certificate.

(ii) **Speech language therapy services.** Speech language therapy services must be provided by a State licensed, speech language pathologist who:

(I) holds a certificate of clinical competence from ASHA; or

(II) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(III) has completed the academic program and is acquiring supervised work experience to qualify for the certificate~~; or~~

~~(IV) a speech therapy assistant authorized by the Board of Examiners, working under the direction of a licensed speech language pathologist. The licensed speech language pathologist may not supervise more than two speech therapy assistants and must be on site~~.

(iii) **Physical therapy services.** Physical therapy services must be provided by a State licensed physical therapist ~~or a physical therapy assistant who has been authorized by the Board of Examiners working under the supervision of a licensed physical therapist. The licensed physical therapist may not supervise more than three physical therapy assistants~~.

(iv) **Occupational therapy services.** Occupational therapy may include provision of services to improve, develop or restore impaired ability to function independently and must be provided by a State licensed occupational therapist ~~or an occupational therapy assistant who has been authorized by the Board of Examiners, working under the supervision of a licensed occupational therapist~~.

(v) **Nursing services.** Nursing services may include the provision of services to protect the health status of infants and toddlers, correct health problems, and assist in removing or modifying

health related barriers and must be provided by a registered nurse or licensed practical nurse under supervision of a registered nurse. Services may include medically necessary procedures rendered in the child's home.

(vi) **Psychological services.** Psychological and counseling services are planning and managing a program of psychological services, including the provision of counseling or consultation to the family of the infant or toddler, when the service is for the direct benefit of the child and assists the family to better understand and manage the child's disabilities. Psychological services must be provided by a State-licensed psychologist.

(vii) **Psychotherapy counseling services.** Psychotherapy counseling services are the provision of counseling for children and parents. All services must be for the direct benefit of the child. Psychotherapy counseling services must be provided by a State licensed Social Worker, a State Licensed Professional Counselor, a State licensed Psychologist, State licensed Marriage and Family Therapist, or a State licensed Behavioral Practitioner, or under Board Supervision to be licensed in one of the above stated areas.

(viii) **Family Training and Counseling for Child Development.** Family Training and Counseling for Child Development services are the provision of training and counseling regarding concerns and problems in development. Services integrate therapeutic intervention strategies into the daily routines of a child and family in order to restore or maintain function and/or to reduce dysfunction resulting from a mental or physical disability or developmental delay. All services must be for the direct benefit of the child. Family Training and Counseling for Child Development services must be provided by a Certified Child Development Specialist.

~~(L) **Personal care services.** Provision of personal care services allow infants and toddlers with developmental disabilities to function safely in their activities of daily living. Includes, but is not limited to assistance with toileting, feeding, positioning, and hygiene. Services must be provided by paraprofessionals who are registered with the Department of Health or Personal Care Assistants, including Licensed Practical Nurses, who have completed on-the-job training specific to their duties.~~

(~~M~~L) **Immunizations.** Immunizations must be coordinated with the Primary Care Physician for those ~~Medicaid-eligible~~ infants and toddlers enrolled in ~~*SoonerCare*~~ SoonerCare. An administration fee, only, can be paid for immunizations provided by the ~~Health Department~~ OSDH.

(~~N~~M) **Assistive Technology.** Assistive technology is the provision of services that help to select a device and assist a student with a disability(ies) to use an Assistive Technology device including coordination with other therapies and training of the child and caregiver. Services must be provided by a:

(i) State licensed Speech Language Pathologist who:

(I) holds a certificate of clinical competence from the American Speech and Hearing Association; or

(II) has completed the equivalent educational requirements and work experience necessary for the certificate; or

(III) has completed the academic program and is acquiring supervised work experience to qualify for the certificate;

(ii) State licensed Physical Therapist; or

(iii) State licensed Occupational Therapist.

317:30-5-641.1. Periodic and interperiodic screening examination

~~At a minimum, referrals to *SoonerCare* providers for periodic screening must be completed and provided in accordance with periodicity schedule following the initial screening~~ Refer to OAC 317:30-3-55.

317:30-5-641.2. Interperiodic screening examination [REVOKED]

~~Interperiodic screenings must be provided when medically necessary to determine the existence of suspected physical or mental illnesses or conditions. They may include physical, mental or dental conditions. The determination of whether an interperiodic screen is medically necessary may be made by a health, developmental or educational professional who comes into contact with the infant or toddler outside of the formal health care system. Medicaid eligible infants and toddlers enrolled in *SoonerCare* are referred to their *SoonerCare* providers for these services. In cases where the *SoonerCare* provider authorizes the Health Department to perform the screen or fails to schedule an appointment within three weeks and a request has been made and documented by the Department of Education or the Department of Health, the Department of Health may then furnish the EPSDT child health screening and bill it as a fee-for-service activity. Results of this interperiodic screening are forwarded to the infant or toddler's *SoonerCare* provider.~~

317:30-5-641.3. Reporting of suspected child abuse/neglect

~~Instances of child abuse and/or neglect discovered through screenings and regular examinations are to be reported in accordance with State law. Title 21, Oklahoma Statutes, Section 846, as amended, states in part: "*Every physician or surgeon, including doctors of medicine and dentistry, licensed osteopathic physicians, residents, and interns, examining, attending or treating a child under the age of 18 years and every registered nurse examining, attending or treating such a child in the absence of a physician or surgeon, and every other person having reason to believe that a child under the age of 18*~~

~~*years has had physical injury or injuries inflicted upon him or her by other than accidental means where the injury appears to have been caused as a result of physical abuse or neglect, shall report the matter promptly to the county office of the Department of Human Services in the county wherein the suspected injury occurred. Proving it shall be a misdemeanor for any person to knowingly and willfully fail to promptly report an incident as provided above.*~~ ~~Persons reporting such incidents of abuse and/or neglect in accordance with the law are exempt from prosecution in civil or criminal suits hat might be brought as a result of the report.~~ Refer to OAC 317:30-5-2(b)(6).

317:30-5-642. Services [REVOKED]

~~Immunization may be billed on the same day as an EPSDT Child Health Screening.~~

~~(1) Service: Child Health Screening; Unit: Completed comprehensive screening.~~

~~(2) Service: Interperiodic Child Health Screening; Unit: Completed interperiodic screening.~~

~~(3) Service: Child Health Encounter; Unit: 5-10 minutes equals 1 unit; 11-20 minutes equals 2 units; over 21 minutes equals 3 units; limited to 30 units per year, additional units must be prior authorized.~~

~~(4) Service: Administration only, Immunization; Unit: one administration.~~

~~(5) Service: Individual Treatment Encounter; Unit: 15 minutes, unless otherwise specified below:~~

~~(A) Hearing and vision services;~~

~~(B) Speech language therapy service;~~

~~(C) Physical therapy services;~~

~~(D) Occupational therapy services;~~

~~(E) Nursing services; Unit: 5 minutes equals 1 unit;~~

~~(F) Psychological services;~~

~~(G) Counseling services;~~

~~(H) Assistive Technology.~~

~~(6) Service: Group Treatment Encounter; Unit: 15 minutes, unless otherwise specified below:~~

~~(A) Hearing and vision services: no more than 5 recipients per group;~~

~~(B) Speech language therapy service: no more than 5 recipients per group;~~

~~(C) Physical therapy services: no more than 5 recipients per group;~~

~~(D) Occupational therapy services: no more than 5 recipients per group;~~

~~(E) Psychological services: no more than 5 recipients per group;~~

~~(F) Counseling services: no more than 5 recipients per group.~~

~~(7) Service: Child Health Diagnostic Encounter includes:~~

~~(A) Hearing Evaluation;~~

~~(B) Service: Audiometric Test (Impedance);~~

~~(C) Service: Ear Impression Mold; Unit: 2 molds(one per ear);~~

~~(D) Service: Speech Language Evaluation;~~

~~(E) Service: Physical Therapy Evaluation;~~

~~(F) Service: Occupational Therapy Evaluation;~~

~~(G) Service: Psychological Evaluation; Unit: 30 minutes, including written report.~~

~~(8) Service: Personal Care Services; Unit: 10 minutes.~~

~~(9) Service: Nutrition Services; Unit: 15 minutes.~~

317:30-5-644. Documentation of records

All early intervention services rendered must be reflected by documentation in the records. ~~When billing for procedures which are reimbursed on a time frame basis, documentation should be placed in the patient's chart as to the beginning and ending times for the services claimed. Documentation of screening services performed must be retained for future review.~~ Documentation of records must include the provider's signature or identifiable initials for every prescription or treatment. Documentation of records may be completed manually or electronically in accordance with guidelines found at OAC 317:30-3-15. Each required element of the age specific screening must be documented with a description of any noted problem anomaly or concern. In addition, a plan for following necessary diagnostic evaluations, procedures and treatments, must be documented. The OHCA Child Health Provider Manual contains forms that may be used for this purpose.

[OAR Docket #06-1014; filed 5-22-06]

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

[OAR Docket #06-1012]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 83. Residential Behavior Management Services in Foster Care Settings
317:30-5-740. through 317:30-5-742. [AMENDED]
317:30-5-742.2. [AMENDED]
317:30-5-743.1. [NEW]
317:30-5-745. [AMENDED]
(Reference APA WF # 05-35)
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ANALYSIS:
Residential Behavior Management Services in Foster Care Settings rules are revised to provide clarity and specificity to the language regarding the Inspection of Care and recoupment process. Guidelines for an on site Inspection of Care for each Therapeutic Foster Care agency that provides care to eligible Medicaid recipients are established. Rules specify the members of the team and elements of the inspection. Revisions also require the signature of the person providing the service in the patient's record and change the period for the provider to appeal a prior authorization decision from 10 working days to 14 calendar days.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 83. RESIDENTIAL BEHAVIOR MANAGEMENT SERVICES IN FOSTER CARE SETTINGS

317:30-5-740. Eligible providers

(a) Eligible Residential Behavior Management Service (RBMS) agencies must:

(1) have a current certification from the Oklahoma Department of Human Services (~~DHS~~ OKDHS) as a child placing agency, and

(2) have a contract with the Division of Children and Family Services of the Oklahoma Department of Human Services, and

(3) have a contract with the Oklahoma Health Care Authority.

(b) Effective July 1, 2002 an eligible RBMS must:

(1) have a current certification from the Oklahoma Department of Human Services (~~DHS~~ OKDHS) as a child placing agency, and

(2) have a contract with the Division of Children and Family Services of the Oklahoma Department of Human Services, and

(3) have a contract with the Oklahoma Health Care Authority, and

(4) have current accreditation status appropriate to provide behavioral management services in a foster care setting from:

(A) Joint Commission on Accreditation of Health Care Organization (JCAHO), or

(B) the Rehabilitation Accreditation Commission (CARF), or

(C) the Council on Accreditation (COA), or

(D) the American Osteopathic Association (AOA).

(c) For eligible RBMS agencies to bill the Oklahoma Health Care Authority for services performed by their providers, a provider of behavior management therapies must:

(1) be a licensed psychologist, social worker (clinical specialty only), professional counselor, marriage and family therapist, or behavioral practitioner, or under Board approved supervision to be licensed in one of the above stated areas; or

(2) have one year of experience in a behavioral health treatment program and a master's degree in a mental health treatment field licensable in Oklahoma by one of the following licensing Boards:

(A) Psychology,

(B) Social work (clinical specialty only),

(C) Professional counselor,

(D) Marriage and family therapist, or

(E) Behavioral practitioner; or

(3) have a baccalaureate degree in a behavioral health related field AND three or more years post-baccalaureate experience in providing direct patient care in a behavioral health treatment setting and be provided a minimum of weekly supervision by a staff member licensed as listed in paragraph (1) of this subsection; or

(4) be a registered psychiatric nurse; AND

(5) demonstrate a general professional or educational background in the following areas:

(A) case management, assessment and treatment planning;

(B) treatment of victims of physical, emotional, and sexual abuse;

(C) treatment of children with attachment disorders;

(D) treatment of children with hyperactivity or attention deficit disorders;

(E) treatment methodologies for emotionally disturbed children and youth;

(F) normal childhood development and the effect of abuse and/or neglect on childhood development;

(G) treatment of children and families with substance abuse and chemical dependency disorders;

(H) anger management; and

(I) crisis intervention.

(d) For eligible RBMS agencies to bill the Oklahoma Health Care Authority for services of their providers for behavior management therapies in a foster care setting as of July 1, 2003 providers must have the following qualifications:

(1) be licensed in the state in which the services are delivered as a licensed psychologist, social worker (clinical ~~speciality~~ specialty only), professional counselor, marriage and family therapist, or behavioral practitioner, or under Board approved supervision to be licensed in one of the areas listed in (c)(2)(A-E) of this section, or

(2) be licensed as an advanced practice nurse certified in a psychiatric mental health ~~speciality~~ specialty, licensed as a registered nurse with a current certification of recognition from the Board of Nursing in the state in which services are provided AND

(3) demonstrate a general professional or educational background in the following areas:

(A) case management, assessment and treatment planning;

(B) treatment of victims of physical, emotional, and sexual abuse;

(C) treatment of children with attachment disorders;

(D) treatment of children with hyperactivity or attention deficit disorders;

(E) treatment methodologies for emotionally disturbed children and youth;

(F) normal childhood development and the effect of abuse and/or neglect on childhood development;

(G) treatment of children and families with substance abuse and chemical dependency disorders;

(H) anger management; and

(I) crisis intervention.

(e) For eligible RBMS agencies to bill the Oklahoma Health Care Authority for Group Rehabilitative Treatment Services in a foster care setting facilitated by their staff, providers must have the following qualifications:

(1) be licensed in the state in which the services are delivered as a licensed psychologist, social worker (clinical specialty only), professional counselor, marriage and family therapist, or behavioral practitioner, or under Board approved supervision to be licensed in one of the areas listed in (c)(2)(A-E) of this section; or

(2) be licensed as an advanced practice nurse certified in a psychiatric mental health specialty, licensed as a registered nurse with a current certification of recognition from the Board of Nursing in the state in which services are provided; or

(3) have a baccalaureate degree in a behavioral health field, a minimum of one year of experience in providing direct care and/or treatment to children and/or families, and have access to weekly consultation with a licensed mental health professional.

317:30-5-741. Coverage by category

(a) **Adults.** Residential Behavior Management Services are not covered for adults.

(b) **Children.** Residential Behavior Management Services are provided in residential foster care programs for certain children and youth authorized by the designated agent of the Oklahoma Health Care Authority. The children and youth designated for this program have special psychological, social and emotional needs, requiring more intensive, therapeutic care than can be found in the traditional foster care setting. The designated children and youth must continually meet medical necessity criteria to be eligible for coverage in this program. The medical necessity criteria ~~is~~ are continually met for initial requests for services and all subsequent requests for services/extensions. Medical necessity criteria ~~is~~ are as follows:

(1) Any DSM-IV AXIS I primary diagnosis, with the exception of V codes and adjustment disorders, with a detailed description of the symptoms supporting the diagnosis. Children with a provisional diagnosis may be admitted for a maximum of 30 days. An assessment must be completed by a Mental Health Professional as defined in OAC 317:30-5-240(c) within the 30 day period resulting in a DSM-IV AXIS I primary diagnosis with the exception of V codes and adjustments disorders, with a detailed description of the symptoms supporting the diagnosis to continue RBMS in a foster care setting.

(2) Conditions are directly attributed to a mental illness/serious emotional disturbance as the primary need for professional attention.

(3) It has been determined by the inpatient authorization reviewer that the current disabling symptoms could not have been or have not been manageable in a less intensive treatment program.

(4) Evidence that the child's presenting emotional and/or behavioral problems prohibit full integration in a family/home setting without the availability of 24 hour crisis response/behavior management and intensive clinical interventions from professional staff, preventing the child from living in a traditional family home.

(5) The child is medically stable and not actively suicidal or homicidal and not in need of substance abuse detoxification services.

(6) The legal guardian/parent of the child (~~DHS/OJA~~ OKDHS/OJA if custody child) agrees to actively participate in the child's treatment needs and planning.

317:30-5-742. Description of services

(a) Behavior management services mean all the services listed in (1)-(8) of this subsection as provided in the treatment plan. Each of the service requirements ~~have~~ has special duration and frequency requirements as set out in OAC 317:30-5-742.2.

(1) Individual therapy;

(2) Substance abuse/chemical dependency education, prevention, and therapy;

(3) Group rehabilitative treatment;

(4) Family therapy;

(5) Basic living skills redevelopment;

(6) Social skills redevelopment;

(7) Crisis/behavior management redirection; and

(8) Discharge planning.

(b) Behavior management services must be provided in the least restrictive, ~~noninstitutional~~ non-institutional therapeutic milieu. The foster care setting is restorative in nature, allowing children with emotional and psychological problems to develop the necessary control to function in a less restrictive setting. Behavior management services are considered an ancillary component of inpatient hospital care and residential treatment services provided in a less restrictive setting and as a less costly alternative to inpatient psychiatric hospital services and other residential treatment services.

(c) Behavioral Management Services must include a treatment plan for each client served. The treatment plan requirements are set out in OAC 317:30-5-742.2(1).

317:30-5-742.2. Required Residential Behavior Management ~~services~~ Services

All residential behavior management services in a foster care setting (RBMS) are provided as a result of an individual assessment of the resident's needs and documented in the individual treatment plan. Services including treatment plan development, individual therapy, family therapy, basic living skills (re)development, social skills (re)development, group rehabilitative treatment, substance abuse/chemical dependency education, prevention and therapy are provided per minimum requirements identified in this section. All services are based upon the resident's treatment plan and consistent with assessed needs. Individual therapy and family therapy may be provided in lieu of group rehabilitative therapy. Crisis behavior management and redirection services are provided as needed. The following represent the minimum service requirement for a resident receiving Residential Behavior Management Services:

(1) **Treatment plan requirement.**

(A) A written treatment plan for each resident shall be formulated by the Provider Agency staff within 30 days of admission with documented input from the resident, legal guardian (~~DHS/OJA~~ OKDHS/OJA) staff, the foster parent and the treatment provider(s). It is acceptable in circumstances where it is necessary to fax a service plan to someone for review and them have them fax back their signature; however, the provider must obtain the original signature for the clinical file within 30 days. No stamped or Xeroxed signatures are allowed. This plan shall be revised and updated each 90 days with documented involvement of the legal guardian and resident.

(B) The treatment plan must be individualized and take into account the resident's age, history, diagnosis, assessed functional levels, and culture. It includes the resident's documented full five-axis DSM-IV diagnosis, appropriate long term and short term goals, and corresponding measurable objectives to obtain the stated goals within the expected time lines. Each resident's treatment plan shall also address the provider agency's plans with regard to the provision of services in each of the following areas:

(i) Individual therapy;

(ii) Substance abuse/chemical dependency education, prevention, and therapy;

(iii) Group rehabilitative treatment;

(iv) Family therapy;

(v) Basic living skills (re)development;

(vi) Social skills (re)development;

(vii) Crisis/behavior management and redirection; and

(viii) Discharge planning.

(2) **Individual therapy.** The provider agency shall provide individual therapy on a monthly basis to youth placed in the residential foster care homes. Individual therapy is a method of treating mental health and alcohol and other drug disorders using face to face, one to one interaction between a Mental Health Professional as defined in OAC 317:30-5-240(c) and the resident to promote behavioral, emotional or psychological change. Individual therapy is age appropriate and the techniques and modalities employed are relevant to the goals of the individual's treatment plan. The required service for each resident served is a minimum of four 30 minute sessions per month of individual therapy.

(3) **Group rehabilitative treatment.** The provider agency will provide group rehabilitative treatment as specified in the individual treatment plan for the treatment of mental health and behavioral disorders for a minimum of two 30 minute sessions per month. Group rehabilitative services provided for children receiving RBMS in a foster care setting include educational and supportive services such as basic living skills, social skills (re)development, interdependent living, self-care, lifestyle change and recovery principles. Services are provided in the least restrictive setting appropriate for the reduction of emotional and behavioral impairment and suitable to the restoration of the resident's functioning. Services are consistent with the requirements of age and appropriate to the resident's behavioral functioning and self sufficiency. Meeting with family members, legal guardian, and/or care givers is covered when the services are directed exclusively to the effective treatment of the individual resident. Each service provided under this section must have a goal and purpose, which relates directly to the resident's individual treatment plan. Compensable rehabilitative treatment services are provided to residents who have the ability to benefit from the service. The resident must be able to actively participate and must possess the cognitive, developmental, and communication skills necessary to benefit from the service. Travel time to and from activities is not covered. Staff to resident ratio shall not exceed eight children to one staff member. Staff appropriately trained, including training and certification in a recognized anger management intervention technique, such as MANDT or CAPE, must be present in the group. Thirty minutes of individual therapy and/or family therapy may be provided in lieu of one hour of group rehabilitative treatment.

(4) **Family therapy.** The provider agency shall provide family therapy as indicated on the resident's individual treatment plan. Family therapy is an interaction between a Mental Health Professional as defined in OAC 317:30-5-240(c) and the family member(s) designated on the treatment plan. The interaction is intended to facilitate behavioral, emotional, or psychological change and promote understanding through successful communication skills. Family therapy shall be provided for a minimum of four 30-minute sessions per month. The Agency shall:

(A) work with the caretaker to whom the resident will be discharged, as identified by the ~~DHS/OJA~~ OKDHS/OJA local worker;

(B) seek to support and enhance the child's relationships with nuclear and appropriate extended

family members, if the ~~DHS/OJA~~ OKDHS/OJA plan for the child indicates family reunification;

(C) arrange for and encourage regular contact and visitation between children and their parents and other family members as specified in the treatment plan;

(D) seek to involve the child's parents/legal guardian in treatment team meetings, plans and decisions and to keep them informed of the child's progress in the program;

(E) provide consultation to the residential foster care parents;

(F) provide regular support and technical assistance to residential foster parents in their implementation of the treatment plan and with regard to other responsibilities they undertake. Fundamental components of such technical assistance will be the design or revision of in-home treatment strategies including proactive goal-setting and planning, and the provision of ongoing child-specific skills training and problem-solving in the home during home visits. Other types of support and supervision should include emotional support and relationship-building, the sharing of information and general training to enhance professional development, assessment of the youth's progress, observation/assessment of family interactions and stress, and assessment of safety issues. Residential foster parents and their biological children shall have access to counseling and therapeutic services arranged by the provider agency for personal issues/problems caused or exacerbated by their work as residential foster parents. Such issues may include, for example, marital stress, or abuse of their own child(ren) by a child placed in their care by the provider agency.

(5) **Substance abuse/chemical dependency education, prevention and therapy.** The provider agency shall provide substance abuse/chemical dependency therapy for all residents who are identified by diagnosis or documented social history as having emotional or behavioral problems directly related to substance abuse and/or chemical dependency. If a resident is identified as requiring substance abuse/chemical dependency therapy, the provider agency shall provide age appropriate substance abuse/chemical dependency therapy. The modalities employed are provided in order to begin, maintain and enhance recovery from alcoholism, problem drinking, drug abuse, drug dependency addiction or nicotine use and addiction. For those clients identified above, substance abuse/chemical dependency therapy must be provided a minimum of two one-hour sessions per month. In the case a resident who has no identifiable emotional or behavioral problem directly related to substance abuse and or chemical dependency, residents must be provided age appropriate education and prevention activities. These may include self-esteem enhancement, violence alternatives, communication skills or other skill development curriculums. For clients who do not need substance and/or chemical dependency therapy, a minimum of two hours of education and/or prevention therapy per three month period is required.

(6) **Basic living skills redevelopment.** The provider agency shall provide goal directed activities for each resident to restore, retain, and improve those basic skills necessary to independently function in a family or community. Basic living skills ~~redevelopment~~ redevelopments are daily activities that are age appropriate and relevant to the goals of the treatment plan. This may include, but is not limited to, food planning and preparation, maintenance of personal hygiene and living environment, household management, personal and household shopping, community awareness and familiarization with community resources, mobility skills, and job application and retention skills. Basic living skill redevelopment therapy must occur a minimum of 30 minutes each day.

(7) **Social skills redevelopment.** The provider agency shall provide goal directed activities for each resident to restore, retain and improve the self help, communication, socialization, and adaptive skills necessary to reside successfully in home and community based settings. These will be daily activities that are age appropriate, culturally sensitive and relevant to the goals of the individual treatment plan. These may include self-esteem enhancement, violence alternatives, communication skills or other related skill development curriculums approved by the provider agency. Social skill redevelopment therapy must occur a minimum of two 30-minute activities each day.

(8) **Crisis behavior management and redirection.** The provider agency shall provide crisis/behavior redirection by agency staff as needed 24 hours per day, 7 days per week. The Agency shall ensure staff availability to respond to the residential foster parents in a crisis to stabilize residents' behavior and prevent placement disruption.

(9) **Discharge planning.** The provider agency shall develop a discharge plan for each resident. The discharge plan must be individualized, child-specific and include an after care plan that is appropriate to the resident's needs and in place at the time of discharge. The plan for children in parental custody must include, when appropriate, reunification plans with the parent(s)/legal guardian. The plan for children who remain in the custody of the Department of Human Services or the Office of Juvenile Affairs shall be developed in collaboration with the case worker and in place at the time of discharge. The discharge plan should include at a minimum, recommendations for continued treatment services, educational services, and other appropriate community resources. Discharge planning provides a transition from foster care placement into a lesser restrictive setting within the community.

317:30-5-743.1. Inspection of Care

There will be an on site Inspection of Care of each Therapeutic Foster Care (TFC) Agency that provides care to recipients which will be performed by the OHCA or its designated agent. The OHCA will designate the members of the Inspection of Care Team. This team will consist of two team members

and will be comprised of Licensed Mental Health Professionals and/or Registered Nurses. The Inspection may include observation and contact with recipients. The Inspection of Care Review will consist of recipients present or listed as facility residents at the beginning of the Inspection of Care visit as well as recipients on which claims have been filed with OHCA for TFC services. The review includes validation of certain factors, all of which must be met for the Medicaid Services to be compensable. Following the on-site inspection, the Inspection of Care Team will report its findings to the facility. The facility will be provided with written notification if the findings of the Inspection of Care have resulted in any deficiencies.

317:30-5-745. Documentation of records

All services must be reflected by documentation in the records including the date the service was provided, the beginning and ending time the service was provided, the location in which the service was provided, a description of the resident's response to the service and whether the service provided was an individual, group or family session, group rehabilitative treatment, social skills (re)development, basic living skills (re)development, crisis behavior management and redirection, or discharge planning, and the signature of the person providing the service.

[OAR Docket #06-1012; filed 5-22-06]

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

[OAR Docket #06-1008]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 89. Radiological Mammographer
317:30-5-901. [AMENDED]
317:30-5-904. [REVOKED]
(Reference APA WF # 05-28)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
DATES:
Comment period:
January 17, 2006 through February 16, 2006
Public hearing:
February 22, 2006
Adoption:
March 9, 2006
Submitted to Governor:
March 15, 2006
Submitted to House:
March 15, 2006
Submitted to Senate:
March 15, 2006
Gubernatorial approval:
April 28, 2006
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 11, 2006
Final adoption:
May 11, 2006
Effective:
June 25, 2006
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Radiological Mammographer rules are revised to remove from rules limited specific codes used by providers when billing for screening and follow-up mammograms. Instead, providers are required to use correct CPT codes when filing for Medicaid reimbursement.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 89. RADIOLOGICAL MAMMOGRAPHER

317:30-5-901. Coverage by category

(a) **Adults.** Payment to mammographers is limited to one screening mammogram and one follow-up mammogram provided once every year to eligible women beginning at age 30. Additional follow-up mammograms ~~(76090 or 76091)~~ are covered when medically necessary. A prior authorization by the Medical Professional Services Division of the Oklahoma Health Care Authority is required for additional follow-up mammograms.

(b) **Children.** There is no coverage for children except as set out under EPSDT.

317:30-5-904. Covered procedures [REVOKED]

~~The claim form for mammographer is HCFA 1500. Procedure codes are as follows:~~

~~(1) 76092 Screening mammography, bilateral two view film study of each breast; one screening (Code 76092) is covered once every year for women beginning at age 30.~~

~~(2) 76090 Mammography; unilateral or 76091 mammography; bilateral one follow-up mammography is covered for women in covered age groups when medically indicated as a result of screening mammography. Additional follow-up mammograms must be prior authorized by the Medical Professional Services Division of the Oklahoma Health Care Authority.~~

[OAR Docket #06-1008; filed 5-22-06]

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

[OAR Docket #06-1009]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Individual Providers and Specialties
Part 105. Residential Behavioral Management Services in Group Settings and Non-secure Diagnostic and Evaluation Centers
317:30-5-1043. [AMENDED]
(Reference APA WF # 05-29)
AUTHORITY:
Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes
DATES:
Comment period:
January 17, 2006 through February 16, 2006
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Submitted to Governor:
March 15, 2006
Submitted to House:
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Gubernatorial approval:
April 28, 2006
Legislative approval:
Failure of the Legislature to disapprove the rule(s) resulted in approval on May 11, 2006
Final adoption:
May 11, 2006
Effective:
June 25, 2006
SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Rules are revised to allow flexibility for group homes to meet the treatment needs of a child when they are unable to attend group therapy due to psychologically not being able to attend a group or missing the group due to outside circumstances such as attending court, and being AWOL on that day. Flexibility is also needed in obtaining signatures of DHS workers and family members by fax regarding treatment plans but still require an original signature for the patient's chart within an appropriate time frame.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 105. RESIDENTIAL BEHAVIORAL MANAGEMENT SERVICES IN GROUP SETTINGS AND NON-SECURE DIAGNOSTIC AND EVALUATION CENTERS

317:30-5-1043. Coverage by category

(a) **Adults.** Residential Behavioral Management Services In Group Settings and Non-Secure Diagnostic and Evaluation Center Services are not covered for adults.

(b) **Children.** Residential Behavioral Management Services (RBMS) in Group Settings and Non-Secure Diagnostic and Evaluation Centers are covered for children as set forth in this subsection.

(1) **Description.** Residential Behavior Management Services are provided by Organized Health Care Delivery Systems (OHCDS) for children in the care and custody of the State who have special psychological, behavioral, emotional and social needs that require more intensive care than can be provided in a family or foster home setting. The behavior management services are provided in the least restrictive environment and within a therapeutic milieu. The group setting is restorative in nature, allowing children with emotional and psychological problems to develop the necessary control to function in a less restrictive setting. Residential Behavior Management Services are reimbursed in accordance with the intensity of supervision and treatment required for the group setting in which the client is placed. Clients residing in a Level E and Intensive Treatment Services (ITS) Group Homes receive maximum supervision and treatment. In addition, ITS group homes provide crisis and stabilization intervention and treatment. Clients residing in a Level D+ Group Home receive highly intensive supervision and treatment. Clients residing in a Level D Group home or in a wilderness camp receive close supervision and moderate treatment. Clients residing in a Level C Group Home receive minimum supervision and treatment. Clients residing in Residential Diagnostic and Evaluation Centers receive intensive supervision and a 20 day comprehensive assessment. Clients residing in a Sanctions Home receive highly intensive supervision and treatment. Clients residing in an Independent Living Group Home receive intensive supervision and treatment. It is expected that RBMS in group settings are an all-inclusive array of treatment services provided in one day. In the case of a child who needs additional specialized services, under the Rehabilitation Option or by a psychologist, prior authorization by the OHCA or designated agent is required. Only specialized rehabilitation or psychological treatment services to address unique, unusual or severe symptoms or disorders will be authorized. If additional services are approved, the OHCDS shall collaborate with the provider of such services as directed by the OHCA or it's agent. Any additional specialized behavioral health services provided to children in state custody shall be funded in the normal manner. The OHCDS shall provide concurrent documentation that these services are not duplicative. The OHCDS determines the need for RBMS.

(2) **Medical necessity criteria.** The following medical necessity criteria must be met for residential behavior Management Services.

(A) Any DSM-IV AXIS I primary diagnosis, with the exception of V codes, with a detailed description of the symptoms supporting the diagnosis. A detailed description of the child's emotional, behavioral and psychological condition must be on file. A diagnosis is not required for behavior management services provided in Diagnostic and Evaluation centers.

(B) The child is medically stable and not actively suicidal or homicidal and not in need of substance abuse detoxification services.

(C) It has been determined by the OHCDS that the current disabling symptoms could not have been or have not been manageable in a less intensive treatment program.

(D) Documentation that the child's presenting emotional and/or behavioral problems prevent the child from living in a traditional family home. The child requires the availability of 24 hour crisis response/behavior management and intensive clinical interventions from professional staff.

(E) The Agency which has permanent or temporary custody of the child agrees to active participation in the child's treatment needs and planning.

(F) All of the medical necessity criteria must also be met for continued stay in residential group settings.

(3) **Treatment components.**

(A) **Treatment plan development.** A comprehensive individualized treatment plan for each resident shall be formulated by the Provider Agency staff within 30 days of admission, for ITS level within 72 hours, with documented input from the Agency which has permanent or temporary custody of the child and when possible, the parent. This plan shall be revised and updated at least every three months, every seven days for ITS, with documented involvement of the Agency which has permanent or temporary custody of the child. Documented involvement can be written approval of the treatment plan by the Agency which has permanent or temporary custody of the child <u>and indicated by the signature of the Agency case worker or liaison on the treatment plan. It is acceptable in circumstances where it is necessary to fax a service plan to someone for review and then have them fax back their signature; however, the provider obtains the original signature for the clinical file within 30 days. No stamped or Xeroxed signatures are allowed</u>. A treatment plan is considered inherent in the provision of therapy and is not covered as a separate item of behavior management services. The treatment plan is individualized taking into account the child's age, history, diagnosis, functional levels, and culture. It includes appropriate goals and time limited and measurable objectives. Each resident's treatment plan shall also address the Provider Agency's plans with regard to the provision of services in each of the following areas:

(i) Group therapy;
(ii) Individual therapy;
(iii) Family therapy;
(iv) Alcohol and other drug counseling;
(v) Basic living skills redevelopment;
(vi) Social skills redevelopment;
(vii) Behavior redirection; and
(viii) The Provider Agency's plan to access appropriate educational placement services. (Any educational costs are excluded from calculation of the daily rate for behavior management services.)

(B) **Individual therapy.** The Provider Agency shall provide individual therapy on a weekly basis with a minimum of one or more sessions totaling one hour or more of treatment per week to children and youth receiving RBMS in Wilderness Camps, Level D, Level D+ homes, Level E Homes, Independent Living Homes, and Sanctions Homes. ITS Level residents will receive a minimum of five or more sessions totaling a minimum of five or more hours of individual therapy per week. Clients residing in Diagnostic and Evaluation Centers and Level C Group Homes receive Individual Therapy on an as needed basis. Individual therapy must be age appropriate and the techniques and modalities employed relevant to the goals and objectives of the individual's treatment plan. Individual counseling is a face to face, one to one service, and must be provided in a confidential setting.

(C) **Group therapy.** The Provider Agency shall provide group therapy to children and youth receiving residential behavioral management services. Group therapy must be a face to face interaction, age appropriate and the techniques and modalities employed relevant to the goals and objectives of the individual's treatment plan. The minimum expected occurrence would be one hour per week in Level D, Level C, Wilderness Camps and Independent Living. Two hours per week are required in Levels D+ and E. Ten hours per week are required in Sanctions Homes, Intensive Treatment Service Level. Group therapy is not required for Diagnostic and Evaluation Centers. Group size should not exceed six members and group therapy sessions must be provided in a confidential setting. <u>One half hour of individual therapy may be substituted for one hour of group therapy.</u>

(D) **Family therapy.** Family therapy is a face to face interaction between the therapist/counselor and family, to facilitate emotional, psychological or behavioral changes and promote successful communication and understanding. The Provider Agency shall provide family therapy as indicated by the resident's individual treatment plan. The Agency shall work with the caretaker to whom the resident will be discharged, as identified by the OHCDS custody worker. The Agency shall seek to support and enhance the

child's relationships with family members (nuclear and appropriate extended), if the custody plan for the child indicates family reunification. The RBMS provider shall also seek to involve the child's parents in treatment team meetings, plans and decisions and to keep them informed of the child's progress in the program. Any service provided to the family must have the child as the focus.

(E) **Alcohol and other drug abuse treatment education, prevention, therapy.** The Provider Agency shall provide alcohol and other drug abuse treatment for residents who have emotional or behavioral problems related to substance abuse/chemical dependency, to begin, maintain and enhance recovery from alcoholism, problem drinking, drug abuse, drug dependency addiction or nicotine use and addiction. This service shall be considered ancillary to any other formal treatment program in which the child participates for treatment and rehabilitation. For residents who have no identifiable alcohol or other drug use, abuse, or dependency age appropriate education and prevention activities are appropriate. These may include self esteem enhancement, violence alternatives, communication skills or other skill development curriculums.

(F) **Basic living skills redevelopment.** The Provider Agency shall provide goal directed activities designed for each resident to restore, retain, and improve those basic skills necessary to independently function in a family or community. Basic living skills redevelopment is age appropriate and relevant to the goals and objectives of the treatment plan. This many include, but is not limited to food planning and preparation, maintenance of personal hygiene and living environment, household management, personal and household shopping, community awareness and familiarization with community resources, mobility skills, job application and retention skills.

(G) **Social skills redevelopment.** The Provider Agency shall provide goal directed activities designed for each resident to restore, retain and improve the self help, communication, socialization, and adaptive skills necessary to reside successfully in home and community based settings. These are age appropriate, culturally sensitive and relevant to the goals of the individual treatment plan. For ITS level of care, the minimum skill redevelopment per day is three hours. Any combination of basic living skills and social skills redevelopment that is appropriate to the need and developmental abilities of the child is acceptable.

(H) **Behavior redirection.** The Provider Agency shall be able to provide behavior redirection management by agency staff as needed 24 hours a day, 7 days per week. The Agency shall ensure staff availability to respond in a crisis to stabilize residents' behavior and prevent placement disruption. In addition, ITS group homes will be required to provide crisis stabilization interaction and treatment for new residents 24 hours a day, seven days a week.

(4) **Providers.** For eligible RBMS agencies to bill the Oklahoma Health Care Authority for services of their providers, the providers of individual, group and family therapies must:

(A) be a licensed psychologist, social worker (clinical specialty only), professional counselor, marriage and family therapist, or behavioral practitioner, or under Board Supervision to be licensed in one of the above stated areas; or

(B) have one year of experience in a behavioral health treatment program and a master's degree in a mental health treatment field licensable in Oklahoma by one of the following licensing boards:

(i) Psychology,
(ii) Social work (clinical specialty only),
(iii) Licensed professional counselor,
(iv) Licensed marriage and family therapist, or
(v) Licensed behavioral practitioner; or

(C) have a baccalaureate degree in a mental health field in one of the stated areas listed in (B) of this paragraph AND three or more years post-baccalaureate experience in providing direct patient care in a behavioral health treatment setting and be provided a minimum of weekly supervision by a staff member licensed as listed in (A) of this paragraph; or

(D) be a registered psychiatric nurse; AND

(E) demonstrate a general professional or educational background in the following areas:

(i) case management, assessment and treatment planning;
(ii) treatment of victims of physical, emotional, and sexual abuse;
(iii) treatment of children with attachment disorders;
(iv) treatment of children with hyperactivity or attention deficit disorders;
(v) treatment methodologies for emotional disturbed children and youth;
(vi) normal childhood development and the effect of abuse and/or neglect on childhood development;
(vii) treatment of children and families with substance abuse and chemical dependency disorders;
(viii) anger management; and
(ix) crisis intervention.

(5) For eligible RBMS agencies to bill the Oklahoma Health Care Authority for services provided by their staff for behavior management therapies (Individual, Group, Family) as of January 1, 2004, providers must have the following qualifications:

(A) be licensed in the state in which the services are delivered as a licensed psychologist, social worker (clinical specialty only), professional counselor, marriage and family therapist, or behavioral practitioner,

or under Board approved Supervision to be licensed in one of the above stated areas; or

(B) be licensed as an Advanced Practice Nurse certified in a psychiatric mental health specialty, licensed as a registered nurse with a current certification of recognition from the Board of Nursing in the state in which services are provided, AND

(C) demonstrate a general professional or educational background in the following areas:

(i) case management, assessment and treatment planning;

(ii) treatment of victims of physical, emotional, and sexual abuse;

(iii) treatment of children with attachment disorders;

(iv) treatment of children with hyperactivity or attention deficit disorders;

(v) treatment methodologies for emotionally disturbed children and youth;

(vi) normal childhood development and the effect of abuse and/or neglect on childhood development;

(vii) treatment of children and families with substance abuse and chemical dependency disorders;

(viii) anger management; and

(ix) crisis intervention.

(D) Staff providing basic living skills redevelopment, social skills redevelopment, and alcohol and other substance abuse treatment, shall meet one of the following areas:

(i) Bachelor's or Master's degree in a behavioral health related field including but not limited to, psychology, sociology, criminal justice, school guidance and counseling, social work, occupational therapy, family studies; or

(ii) a current license as a registered nurse in Oklahoma; or

(iii) certification as an Alcohol and Drug Counselor is allowed to provide substance abuse rehabilitative treatment to those with alcohol and/or other drug dependencies or addictions as a primary or secondary DSMIV Axis I diagnosis; or

(iv) current certification as a Behavioral Health Case Manager from DMHSAS and meets OHCA requirements to perform case management services, as described in OAC 317:30-5-595(7).

(E) Staff providing behavior redirection services must have current certification and required updates in nationally recognized behavior management techniques, such as CAPE or MANDT. Additionally, staff providing these services must receive initial and ongoing training in at least one of the following areas: anger management, crisis intervention, normal child and adolescent development and the effect of abuse, neglect and/or violence on such development, grief and loss issues for children in out of home placement, interventions with victims of physical, emotional and sexual abuse, care and treatment of children with attachment disorders, care and treatment of children with hyperactive, or attention deficit, or conduct disorders, care and treatment of children, youth and families with substance abuse and chemical dependency disorders, passive physical restraint procedures, procedures for working with delinquents or the Inpatient Mental Health and Substance Abuse Treatment of Minor's Act.

(F) In addition, Behavioral Management staff shall have access to consultation with an appropriately licensed mental health professional.

[OAR Docket #06-1009; filed 5-22-06]

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

[OAR Docket #06-1016]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Individual Providers and Specialties
Part 110. Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/Us) [NEW]
317:30-5-1085. through 317:30-5-1099. [NEW]
(Reference APA WF # 05-39)

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ANALYSIS:
Rules establish the description of services allowed for Indian Health Services/Tribal Clinics/Urban Tribal Clinics (I/T/U) along with eligible providers and participant requirements. Rules define services provided by I/T/Us, encounters, eligible providers, service definitions, and billing and reimbursement. These rules allow for payment of up to three different encounters per day per recipient as long as each encounter is for a different

diagnosis. Rules also allow I/T/U facilities to dispense 90 day supplies to Medicaid Patients.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES

PART 110. INDIAN HEALTH SERVICES, TRIBAL PROGRAMS, AND URBAN INDIAN CLINICS(I/T/US)

317:30-5-1085. General provisions

(a) Indian Health Services (IHS) provide health care to Certificate of Degree of Indian Blood (CDIB) eligible American Indian and Alaska Natives (AI/AN). The IHS is a division of the Department of Health and Human Services that administers a system of hospitals and Indian health outpatient services. Urban Indian Clinics are considered facilities of the IHS. Under the Indian Self-Determination Act, Public Law 93-638, as amended, Tribes may also provide health care to CDIB eligible AI/ANs.

(b) The rules at OAC 317:30-3 apply to IHS, Tribal, and Urban Indian facilities. Additionally, unless otherwise stated, all other Medicaid rules apply to IHS, Tribal, and Urban Indian facilities.

317:30-5-1086. Eligible I/T/U providers

Indian Health Services, Tribal Programs, and Urban Indian Clinics (I/T/Us) are considered eligible for participation in the Medicaid Program. To receive Medicaid reimbursement, an I/T/U must have a current contract on file with the Oklahoma Health Care Authority (OHCA). OHCA recognizes that I/T/Us are the payer of last resort, and are not considered creditable health insurance.

317:30-5-1087. Terms and definitions

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

"American Indian/Alaska Native (AI/AN)" means an individual of Native American descent who has or is eligible for a Certificate of Degree of Indian Blood (CDIB) card.

"CFR" means the Code of Federal Regulations.

"CMS" means the Centers for Medicare and Medicaid Services.

"Encounter" means a face to face contact between a health care professional and a CDIB card eligible Medicaid recipient for the provision of medically necessary Title XIX or Title XXI covered services through an IHS or Tribal 638 facility or an urban Indian clinic within a 24-hour period ending at midnight, as documented in the patient's record.

"Mental Health Professional (MHP)" means a licensed psychologist, licensed clinical social worker (LSW-C), licensed marital and family therapist (LMFT), licensed professional counselor (LPC), licensed behavioral practitioner (LBP) or licensed alcohol and drug counselor (LADC).

"OHCA" means the Oklahoma Health Care Authority.

"OMB rate" means the Medicaid reimbursement rate negotiated between CMS and IHS. These rates are published in the Federal Register or Federal Register Notices. It is also known as the I/T/U encounter rate.

"Physician" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the state in which the function is performed or who is a licensed physician employed by the Federal Government in an IHS facility or who provides services in a 638 Tribal Facility.

"State Administering Agency (SAA)" is the Oklahoma Health Care Authority.

"638 Tribal Facility" is a facility that is operated by a tribe or tribal organization and funded by Title I or Title III of the Indian Self Determination and Education Assistance Act (Public Law 93-638).

317:30-5-1088. I/T/U provider participation requirements

(a) I/T/Us must either directly employ or contract the services of legally credentialed professional staff that are authorized within their scope of practice under state law to provide the services for which claims are submitted to Medicaid; or I/T/U Physicians may meet all requirements for employment by the Federal Government as a physician and be employed by the Federal Government in an IHS facility or affiliated with a 638 Tribal Facility.

(b) The facility is required to report professional staff contracted or employed by the I/T/U to the OHCA. Participating I/T/Us are required to submit a list of names of all practitioners working within the facility and a list of all individual OHCA provider numbers. The reimbursement for the services rendered at or on behalf of the I/T/U will be made to the facility.

(c) The following professional staff practitioners are recognized by OHCA:

(1) Physicians;

(2) Licensed Physician Assistants;

(3) Dentists;

(4) Pharmacists;

(5) Advanced Nurse Practitioners;

(6) Certified Nurses Midwives;

(7) Other specialized nurse practitioners;

(8) Registered nurses under the supervision of a licensed physician; and

(9) Other certified or licensed health care professionals or para-professionals including but not limited to licensed

clinical social workers (LSW-C), marital and family therapists (LMFT), licensed professional counselors (LPC), licensed behavioral practitioners (LBP), and licensed alcohol and drug counselors (LADC) for the services that are within the practitioner's scope of practice.

317:30-5-1089. I/T/U multiple sites

(a) I/T/Us may contract as a PCP/CM under SoonerCare Choice (See OAC 317:25-7-5).

(b) I/T/Us are required to submit a list of all clinics affiliated or owned by the facility including any clinics that do not have I/T/U status, along with all OHCA provider numbers assigned to these clinics.

317:30-5-1090. Provision of other health services outside of the I/T/U encounter

(a) An I/T/U outpatient facility may provide other items and services which are not part of an encounter. If covered, these services are separately billable to the Medicaid program. Coverage of services will be based upon medical necessity and the scope of coverage under the Medicaid program and subject to any limitations, restrictions or prior authorization requirements.

(b) Medically necessary Medicaid covered services that are not included in the I/T/U outpatient encounter rate may be billed outside the encounter rate within the scope of the Medicaid fee-for-service rate. For non-emergency transportation, refer to OAC 317:35-3-2. Examples of these services include but are not limited to:

(1) pharmaceuticals/drugs;
(2) durable medical equipment;
(3) glasses;
(4) ambulance;
(5) home health; and
(6) inpatient physician services.

(c) If the I/T/U facility chooses to provide other Medicaid State Plan covered health services which are not included in the I/T/U encounter definition, those service providers must be contracted and bill for those services under their assigned provider number consistent with program coverage limitations and billing procedures described by the OHCA.

317:30-5-1091. Definition of I/T/U services

(a) As described in Title 42 of the Code of Federal Regulations (CFR) 136.11(a), the I/T/U services may include hospital and medical care, dental care, public health nursing and preventive care (including immunizations), and health examination of special groups such as school children.

(b) Further, Title 42 CFR 136.11(c) allows that the scope and availability of I/T/U services will depend upon the resources of the facility.

(c) I/T/U services may be covered when furnished to a patient at the clinic or other location, including a mobile clinic, or the patient's place of residence.

(d) I/T/U outpatient encounters include but are not limited to:

(1) Physicians' services and supplies incidental to a physician's services;
(2) Within limitations as to the specific services furnished, a doctor of dentistry or oral surgery, a doctor of optometry, or a doctor of podiatry [Refer to section 1861(r) of the Act for specific limitations];
(3) The services of a resident as defined in OAC 317:25-7-5(4) who meets the requirements for payment under SoonerCare and the supplies incidental to a resident's services;
(4) Services of advanced practice nurses (APNs), physician assistants (PAs), certified nurse midwives (NMs), or specialized advanced practice nurse practitioners;
(5) Services and supplies incidental to the services of APNs and PAs (including services furnished by certified nurse midwives);
(6) Visiting nurse services to the homebound;
(7) Mental health professional services and services and supplies incidental to the services of MHPs; and
(8) Dental services.

317:30-5-1092. Services and supplies incidental to I/T/U outpatient encounters

Services and supplies incidental to the service of a physician, physician assistant, advanced practice nurse, clinical psychologist, or clinical social worker may be covered if the service or supply is:

(1) of a type commonly furnished in physicians' offices;
(2) of a type commonly rendered either without charge or included in the I/T/U's bill;
(3) furnished as an incidental, although integral, part of professional services furnished by a physician, nurse practitioner, physician assistant, nurse midwife, or specialized nurse practitioner;
(4) furnished under the direct, personal supervision of a nurse practitioner, physician assistant, nurse midwife, specialized nurse practitioner or a physician; and
(5) in the case of a service, furnished by a member of the I/T/U's health care staff who is an employee of the clinic.

317:30-5-1093. I/T/U visiting nurses services

(a) Visiting nurse services may be covered if:

(1) The I/T/U is located in an area in which the Centers for Medicare and Medicaid Services (CMS) has determined that there is a shortage of home health agencies;
(2) The services are rendered to a homebound individual;
(3) The services are furnished by a registered nurse, licensed practical nurse, or licensed vocational nurse who is employed by, or receives compensation for the services from the I/T/U; and
(4) The services are furnished under a written plan of treatment that is:

(A) established and reviewed at least every 60 days by a supervising physician of the I/T/U or established by a nurse practitioner, physician assistant, nurse midwife, or specialized nurse practitioner and reviewed at least every 60 days by a supervising physician; and

(B) signed by the nurse practitioner, physician assistance, nurse midwife, specialized nurse practitioner, or the supervising physician of the clinic.

(b) The nursing care covered by this section includes:

(1) Services that must be performed by a registered nurse, licensed practical nurse, or licensed vocational nurse if the safety of the patient is to be assured and the medically desired results achieved; and

(2) Personal care services, to the extent covered under Medicare as home health services. These services include helping the patient to bathe, to get in and out of bed, to exercise and to take medications.

(c) This benefit does not cover household and housekeeping services or other services that would constitute custodial care.

(d) For purposes of this section, homebound means an individual who is permanently or temporarily confined to his or her place of residence because of a medical or health condition. The individual may be considered homebound if he or she leaves the place of residence infrequently. For this purpose, place of residence does not include a hospital or long term care facility.

317:30-5-1094. Mental health services provided at I/T/Us

(a) Mental health services that are primary, preventive, and therapeutic and that would be covered if provided in another setting may be provided by I/T/U providers. Services provided by an I/T/U (refer to OAC 317:30-5-241 for a description of services) must meet the same requirements as services provided by another provider. Services include:

(1) Mental Health Assessment/Evaluation Testing;

(2) Alcohol and/or Substance Abuse Services Assessment and Treatment Plan Development;

(3)Crisis Intervention Services;

(4) Medication Training and Support;

(5) Individual/interactive Psychotherapy;

(6) Group Psychotherapy; and

(7) Family Psychotherapy.

(b) Mental health professional therapy services are covered when provided in accordance with a documented individualized treatment plan, developed to treat the identified mental health and/or substance abuse disorder(s). A minimum of a 45 to 50 minute standard clinical session must be completed by an I/T/U in order to bill an encounter for the session.

(c) In order to support access to mental health services, these services may be provided in settings outside of the I/T/U. Off-site services must take place in a confidential setting.

(d) The outpatient behavioral health services' provider enrollment and reimbursement process in no way changes the OHCA's policy with regard to reimbursement of practitioners. Licensed clinical social workers (LSW-C), licensed marital and family therapists (LMFT), licensed professional counselors (LPC), licensed behavioral practitioners (LBP), and licensed alcohol and drug counselors (LADC) are not eligible for direct reimbursement as practitioners. Their services are compensable only when billed by their employers and when provided in those clinical settings in which they are currently approved to render services.

(e) For the provision of behavioral health related case management services, I/T/U providers must meet the requirements found at OAC 317:30-5-585 through 317:30-5-589 and OAC 317:30-5-595 through 317:30-5-599.

(f) For the provision of psychosocial rehabilitation services, I/T/U facilities must contract as an outpatient behavioral health agency. (Refer to OAC 317:30-5-240). The provision of these services is considered to be outside of the I/T/U encounter.

317:30-5-1095. I/T/U services not compensable under outpatient encounters

(a) I/T/U services that are not compensable under outpatient encounters include:

(1) group or mass information programs, health education classes, or group education activities, including media productions and publications;

(2) vaccines covered by the Vaccines for Children program [refer to OAC 317:30-5-14(a)(1)]; and

(3) group or sports physicals and medical reports.

(b) Exclusions from the definition of I/T/U encounters include but are not limited to:

(1) Durable medical equipment or medical supplies not generally provided during the course of a clinic visit such as diabetic supplies. However, gauze, band-aids, or other disposable products used during an office visit are considered as part of the cost of an encounter and cannot be billed separately under fee-for-service;

(2) Pharmaceutical or biologicals not generally provided during the clinic visit. For example, sample medications are part of the encounter but dispensing a prescription is billed separately under the fee-for-service pharmacy program;

(3) Other services that are not defined in this rule or the State Plan under Title XIX or Title XXI of the Social Security Act.

(4) Eyeglasses (refer to OAC 317:30-5-450);

(5) Emergency ambulance transportation (refer to OAC 317:30-5-335);

(6) Non-emergency transportation;

(7) Prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags) and supplies directly related to colostomy care and the replacement of such devices;

(8) mental health rehabilitative services [see 317:30-5-241(a)(7)];

(9) hearing aids;

(10) administrative medical examinations and report services; and

(11) drug samples or other prescription drugs provided to the clinic free of charge.

317:30-5-1096. I/T/U off-site services

I/T/U covered services provided off-site or outside of the I/T/U setting are compensable when billed by the I/T/U. The I/T/U must have a written contract with the physician and other practitioners that specifies that the I/T/U will bill Medicaid for services provided off-site and how such providers will be compensated.

317:30-5-1097. Billable I/T/U encounters

I/T/U encounters that are billed to the OHCA must meet the definition listed in OAC 317:30-5-1099 and are limited to medically necessary State Plan services covered by OHCA. These services include ambulatory services included in the State Plan under Title XIX or Title XXI of the Social Security Act.

317:30-5-1098. I/T/U outpatient encounters

(a) I/T/U outpatient encounters that are billed to the OHCA must meet the definition in this section and are limited to services covered by the OHCA. These services include health services included in the State Plan under Title XIX or Title XXI of the Social Security Act.

(b) The following words and terms have the following meaning unless the context clearly indicates otherwise:

(1) The definition of an I/T/U outpatient encounter is a face-to-face contact between a health care professional and a CDIB card eligible Medicaid recipient for the provision of Title XIX and Title XXI covered outpatient services in an IHS or Tribal 638 facility or an Urban Indian facility within a 24-hour period ending at midnight, as documented in the patient's medical record.

(2) An I/T/U encounter means outpatient services that may be covered when furnished to a patient by employees of the I/T/U facility at the I/T/U facility or other location, including the patient's place of residence.

(c) The following services may be considered reimbursable encounters subject to the limitations of the Oklahoma state plan and include any related medical supplies provided during the course of the encounter:

(1) Medical;
(2) Diagnostic;
(3) Substance Abuse Assessment;
(4) Dental, Medical and Mental Health Screenings;
(5) Vision;
(6) Physical Therapy;
(7) Occupational Therapy;
(8) Podiatry;
(9) Mental Health;
(10) Alcohol and Drug;
(11) Speech;
(12) Hearing;
(13) Visiting Nurse Services;
(14) Other Title XIX or XXI services as allowed under OHCA's Medicaid State Plan and OHCA Administrative Rules;
(15) Drugs or medication treatments provided during a clinic visit are part of the encounter rate. For example, a client has come into the clinic with high blood pressure and is treated at the clinic with a hypertensive drug or drug sample. Drug samples are included in the encounter rate. Prescriptions are not included in the encounter rate and must be billed through the pharmacy program by a qualified enrolled pharmacy;
(16) Encounters with a registered professional nurse or a licensed practical nurse and related medical supplies (other than drugs and biologicals) furnished on a part-time or intermittent basis to home-bound clients (limited to areas in which the Secretary has determined that there is a shortage of home health agencies (42 CFR 405.2417), and any other health services covered by OHCA; and
(17) I/T/U Multiple Outpatient Encounters.

(A) OHCA will cover one medically necessary outpatient medical encounter per client per day unless if due to an emergency, the same client returns on the same day for a second visit with a different diagnosis. Then, a second encounter is allowed.

(B) OHCA will cover one dental encounter per client per day regardless of how many procedures are done or how many providers are seen unless if due to an emergency, the same client returns on the same day for a second visit and has a different diagnosis. Then, a second encounter is allowed.

(C) OHCA will cover one mental health professional outpatient encounter per client per day unless if due to an emergency, the same client returns on the same day for a second visit and has a different diagnosis. Then, a second encounter is allowed.

(D) Each service must have distinctly different diagnoses in order to meet the criteria for multiple I/T/U outpatient encounters. For example, a medical visit and a dental visit on the same day are considered different services with distinctly different diagnoses.

(E) Similar services, even when provided by two different I/T/U health care practitioners, are not considered multiple encounters. Situations that would not be considered multiple encounters provided on the same date of service include, but are not limited to:

(i) A well child check and an immunization;
(ii) A preventive dental screen and fluoride varnish application in a single setting;
(iii) A medical encounter with a mental health or addiction diagnosis on the same day as a mental health or addiction encounter;
(iv) A mental health and addiction encounter with similar diagnosis;
(v) Any time a client receives only a partial service with one provider and partial service from another provider. This would be considered a singe encounter.

(d) More than one outpatient visit with a medical professional within a 24-hour period for distinctly different diagnoses may be reported as two encounters. This does not imply that if a client is seen at a single office visit with multiple problems that multiple encounters can be billed. For example, a client comes to the clinic in the morning for an immunization, and in

the afternoon, the client falls and breaks an arm. This would be considered multiple medical encounters and can be billed as two encounters. However, a client who comes to the I/T/U facility for a prenatal visit in the morning and delivers in the afternoon would not be considered a distinctly different diagnosis and can only be billed as a single encounter.

(e) The following services may be considered as separate or multiple encounters when two or more services are provided on the same date of service with distinctly different diagnoses:

(1) Medical Services;

(2) Dental Services;

(3) Mental Health or addiction services unless both services have similar diagnoses, only one encounter can be reported. In addition, if the client is also seen for a medical office visit with a mental health or addiction diagnosis, then it is considered a single encounter;

(4) Physical or occupational therapy (PT/OT). If this service is also performed on the same date of service as the medical encounter that determined the need for PT/OT (initial referral), then it is considered a single encounter;

(5) Administration of immunizations. If no other medical office visit occurs on the same date of services; and

(6) Tobacco cessation limited to state plan services. If no other medical or addiction encounter occurs on the same date of service.

(f) I/T/U outpatient encounters for CDIB eligible Medicaid recipients whether medical, dental, or behavioral health, are not subject to prior authorization. Other state plan covered services that the I/T/U facility chooses to provide but which are not part of the I/T/U encounter are subject to all applicable Medicaid regulations which govern the provision and coverage for that service.

317:30-5-1099. I/T/U service limitations

Service limitations governing the provision of all Oklahoma Medicaid services will apply pursuant to Chapter 30 of the OHCA rules. In addition, the following limitations and requirements apply to services provided by I/T/U facilities:

(1) **Multiple encounters.** An I/T/U facility may bill for more than one encounter per 24 hour period under certain conditions.

(2) **Behavioral Health services.** Behavioral Health Services are limited to those services furnished to members at or on behalf of the I/T/U facility.

(3) **Laboratory procedures.** Laboratory procedures performed by an I/T/U outpatient facility (not an independently certified enrolled laboratory) are considered part of the health care practitioner's service and are included in the I/T/U encounter.

[OAR Docket #06-1016; filed 5-22-06]

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

[OAR Docket #06-1005]

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Agency appeal rules are being revised to accurately reflect the agency which will hear various employer and employee eligibility appeals for the Oklahoma Employer and Employee Partnership for Insurance Coverage (O-EPIC) Program. Rules regarding the various appeal processes are relocated to individual sections to help clarify the correct procedures to be followed. In addition, rules are amended to correct various rule citations. Revisions are needed to provide appeal guidelines for the O-EPIC program and clarify appeal procedures Further revisions bring rules in line with other Sections of rules.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. COVERAGE AND EXCLUSIONS

317:35-3-2. Medicaid transportation and subsistence

The Oklahoma Health Care Authority (OHCA) is responsible for assuring that necessary transportation is available to all eligible Medicaid recipients who are not otherwise covered through their Managed Care Plan and who are in need of Medicaid medical services. Reimbursement for transportation costs must be prior authorized by the local Department of Human Services' (~~DHS~~ OKDHS) county director. Transportation costs must be for a medically necessary examination or treatment and only when transportation is not otherwise available. Payment through Medicaid may be made for transportation by private vehicle, bus, taxi, ambulance or airplane. Payment is made for a private vehicle at the Medicaid fee schedule rate and for public carrier at the public carrier rate. Individuals transporting more than one authorized recipient, from and to one destination and back, at the same time are reimbursed for only one trip. When transporting more than one authorized recipient, from and to and back to different locations, at the same time, reimbursement is made for one round trip. Beginning June 1, l999, the Oklahoma Health Care Authority (OHCA) will begin a pilot transportation broker project with the Metropolitan Tulsa Transit Authority (MTTA) known as SoonerRide. SoonerRide will exclude individuals who are enrolled in a Managed Care Organization (MCO) through OHCA, those individuals who are categorized as institutionalized, and those individuals who are categorized as Qualified Medicare Beneficiaries Plus (QMBP), Specified Low Income Medicare Beneficiaries (SLMB), and Qualifying Individuals-1 ~~and 2~~. Clients seeking medically necessary non-emergency transportation will be required to contact the SoonerRide reservation center. Contact will be made via a toll-free phone number which will be answered Monday through Saturday, 8 a.m. to 6 p.m. Whenever possible, the client is required to notify SoonerRide at least 72 hours prior to the appointment. The client will be asked to furnish the SoonerRide reservation center the case number, home address, the time and date of the medical appointment, the address of the medical provider, and any physical/mental limitations which will impact the type of transportation needed. SoonerRide will make arrangements for the most appropriate, least costly transportation. SoonerRide will verify appointments when appropriate. The SoonerRide contractor will be responsible for recruiting providers in each county and ensuring that all transportation providers meet all appropriate regulations for the provision of public transportation. Provider qualifications will include, but is not limited to, verification of liability insurance and drug testing. All non-emergency transportation will be arranged by SoonerRide. If the client disagrees with the transportation arranged or denied by SoonerRide, an appeal should be filed with ~~SoonerRide~~ OHCA within 48 hours of the notification. The appropriateness of transportation may be appealed only to the extent that the transportation does not meet the medical needs of the client. Dissatisfaction with the use of public transportation, shared rides, type of vehicle, etc., is not appropriate grounds for appeal. The Oklahoma Health Care ~~Authority~~ Authority's decision will ~~make the~~ be final ~~decision on any disputes which cannot be settled between the client and SoonerRide~~. As provider networks are developed, SoonerRide will be expanded to include additional counties. Before a county is phased into SoonerRide, county officials and clients will be notified. A public meeting will be held prior to inclusion of each new county.

(1) **Authorization for transportation by private vehicle.**

(A) Reimbursement for transportation by a private vehicle (privately owned, leased or rented) may be made directly to the client or to another person providing the private transportation for the client. Authorization cannot be made to a ~~DHS~~ OKDHS or OHCA employee or the spouse of a ~~DHS~~ OKDHS or OHCA employee, unless he/she is a certified volunteer, or any employee of another county, state or federal agency who is providing the transportation as a part of the regular duties within that agency. Private transportation is authorized at the Medicaid fee schedule rate from and to the transporter's point of origin. Claim for payment is filed on a travel reimbursement form, after it has been documented that the individual kept the appointment(s) for the medical services. Transportation by a private vehicle may be authorized when the recipient:

(i) lives in a rural area where needed Medicaid medical examination or treatment is not available and the recipient must travel outside his/her local community to receive the needed medical services.

(ii) receives Medicaid medical services within his/her own community, and it has been documented that the transportation cannot be made available through the individual's own efforts or through community volunteer resources.

(B) The distances for which reimbursement is claimed may not exceed the distances set forth in the latest Transportation Commission road map. Travel claimed between points not shown on the official map shall be based on actual odometer readings. Vicinity travel is entered on travel claims as a separate item from road map mileage, for city and rural traveling within a small area, and is computed using mileage on the basis of actual odometer readings.

(C) Travel is reimbursed on the basis of the actual number of miles traveled from the transporter's point of origin to the first official call, subsequent official calls, and return to the point of origin. Recipients or transporters returning to a destination other than the original starting point (with local ~~DHS~~ OKDHS County Director approval) must provide a brief explanation on the travel reimbursement form.

(D) Reimbursement for out-of-state transportation (not to exceed 100 map miles) that is medically

necessary and would not require reimbursement for per diem may be authorized when the transportation is deemed in the best interest of the recipient and the OHCA.

(2) **Reimbursement for public transportation.**

(A) **Authorization for transportation by bus.** Transportation by bus is authorized when it is necessary for an eligible individual to receive treatment in a medical facility. (If the services of an escort are necessary, see (6) of this Section).

(B) **Authorization for transportation by taxi.** Taxi service may be authorized only when transportation cannot be arranged through the individual's own efforts or through community resources. When taxi service is necessary to transport recipients to and from their home to the medical provider or to the nearest point of common carrier access or a common carrier to the medical provider, reimbursement is paid on the basis of actual expenses. A memo giving a detailed explanation of why the taxi service had to be used must be attached to the travel reimbursement form. Taxicab charges must be itemized on the travel reimbursement form and are reimbursed only upon justification as to the necessity of their use.

(3) **Transportation by ambulance (ground, air ambulance or helicopter).** Transportation by ambulance is compensable for individuals eligible for Medicaid benefits when other available transportation does not meet the medical needs of the individual. Payment is made for ambulance transportation to and/or from a medical facility (a physician's office or clinic is not considered a medical facility) for medical care compensable under Medicaid.

(4) **Transportation by airplane.** When an individual's medical condition is such that transportation out-of-state by a commercial airline is required, approval for airfare must be secured by telephoning the OHCA, Medical Authorization Unit, who will make the necessary flight arrangements.

(5) **Subsistence (sleeping accommodations and meals).** An individual who is eligible for transportation to or from a medical facility to obtain medical services may receive assistance with the necessary expenses of lodging and meals from Medicaid funds. If the individual does not have the funds for the necessary subsistence, authorization is made by the local office on Room and Board Order form. The individual may choose to pay for the lodging and meals and be reimbursed by filing a travel reimbursement form. Any subsistence expense claimed on the travel reimbursement form must be documented with receipts, and reimbursement cannot exceed state per diem amounts. Payment for meals is based on a daily per diem and may be used for breakfast, lunch or dinner, or all three meals, whichever is required.

(6) **Escort assistance required.** Payment for transportation and subsistence of one escort may be authorized if the service is required. Only one escort may be authorized. It is the responsibility of the Oklahoma Department of Human Services' social worker to determine this necessity. The decision should be based on the following circumstances:

(A) when the individual's health does not permit traveling alone; and

(B) when the individual seeking medical services is a minor child.

SUBCHAPTER 15. PERSONAL CARE SERVICE

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

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

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

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

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

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

(ii) The contractor payment fee covers all Personal Care services included on the service and

care plans developed by the LTC nurse or ADvantage case manager. Payment is made for direct services and care of the eligible client(s) only. The area nurse, or designee, authorizes the number of units of service the client receives each month.

(2) **Problem resolution.** If the client is dissatisfied with the agency or the assigned PCA, the client contacts the LTC nurse for problem resolution. If the situation cannot be resolved, the client has the right to appeal to the OHCA. (Refer to OAC ~~317:2~~ 317:2-1-2). For clients receiving ADvantage services, their case manager should be contacted for the problem resolution. If the problem remains unresolved, the contact may be made with the Consumer Inquiry System (CIS) at the Long Term Care Authority.

[OAR Docket #06-1005; filed 5-22-06]

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

[OAR Docket #06-1013]

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Programs of All-Inclusive Care for the Elderly (PACE) rules are issued to establish the requirements for the Cherokee Nation Pilot Program to provide home and community-based acute and long-term care services to eligible elderly clients who meet the medical requirements for nursing facility care and can be served safely and appropriately in the community. Rules define eligibility for individuals entering the program and provider requirements.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 18. PROGRAMS OF ALL-INCLUSIVE CARE FOR THE ELDERLY

317:35-18-1. Programs of All-Inclusive Care for the Elderly (PACE)

This chapter establishes the requirements for the Cherokee Nation Pilot Program to provide services to eligible elderly clients through the Oklahoma Health Care Authority's Programs of All-Inclusive Care for the Elderly (PACE).

317:35-18-2. Introduction

(a) Programs of All-Inclusive Care for the Elderly (PACE) provide home and community-based acute and long-term care services to eligible individuals who meet the medical requirements for nursing facility care and can be served safely and appropriately in the community. PACE is optional in a State Medicaid program. PACE is jointly funded and administered by the Centers for Medicare and Medicaid Services and the state of Oklahoma. The PACE provider receives a monthly capitation payment and is at full risk for the delivery of all medically necessary services for the recipient. For eligible individuals who elect to participate in the PACE program, the OHCA will make capitation payments for individuals who are only eligible for Medicaid or who are dually eligible for Medicaid and Medicare. OHCA will contract with the Cherokee Nation for a PACE pilot program in the geographic areas as specified and approved in the Cherokee Nation PACE application. The Cherokee Nation PACE pilot program will provide medically necessary services to both American Indian/Alaska Native (AI/AN) and non-Indian Medicaid eligible recipients.

(b) Rules applicable to the operation of the PACE program are contained in 42 Code of Federal Regulations (CFR), Part 460. These regulations, as currently written or amended in the future, are incorporated by reference as the rule base for operating the PACE program in Oklahoma.

317:35-18-3. Definitions

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

(1) **"American Indian/Alaska Native (AI/AN)"** means an individual of Native American descent who has or is eligible for a Certificate of Degree of Indian Blood (CDIB) card;

(2) **"Capitation"** means the per member per month (pmpm) amount that the Oklahoma Health Care Authority pays to the PACE provider.
(3) **"Interdisciplinary Team (IDT)"** means the team of persons who interact and collaborate to assess PACE clients and plan for their care as set forth in 42 CFR 460:102. The IDT may also include the PACE client's personal representative or advocate.
(4) **"Participant"** means an individual enrolled in a PACE program.
(5) **"Program agreement"** means the three-party agreement between the PACE provider, CMS, and OHCA.
(6) **"Provider"** means the non-profit entity established by the Cherokee Nation that delivers required PACE services under an agreement with OHCA and CMS.
(7) **"Service area"** means the geographic area served by the provider agency, according to the program agreement.
(8) **"State Administering Agency (SAA)"** means the Oklahoma Health Care Authority.

317:35-18-4. Provider regulations

(a) The provider must comply with provisions of this Subchapter, and the regulations in 42 CFR, Part 460.
(b) The provider agency must be licensed by the State of Oklahoma as an adult day care center.
(c) The provider must meet all applicable local, state, and federal regulations.
(d) The provider must maintain an inquiry log of all individuals requesting Programs of All-Inclusive Care for the Elderly (PACE) services. This log will be available to the OHCA at all times. The log must include:
(1) type of contact;
(2) date of contact;
(3) name and phone number of the individual requesting services;
(4) name and address of the potential client; and
(5) date of enrollment, or reason for denial if the individual is not enrolled.

317:35-18-5. Eligibility criteria

(a) To be eligible for participation in PACE, the applicant must:
(1) meet categorical relationship to disability (reference OAC 317:35-5-4);
(2) meet medical and financial criteria for the ADvantage program (reference OAC 317:35-17-2, 317:35-17-10, and 317:35-17-11);
(3) be age 55 years or older;
(4) live in a PACE service area;
(5) be determined by the PACE Interdisciplinary team as able to be safely served in the community. If the PACE provider denies enrollment because the IDT determines that the applicant cannot be served safely in the community, the PACE provider must:
(A) notify the applicant in writing of the reason for the denial;
(B) refer the individual to alternative services as appropriate;
(C) maintain supporting documentation for the denial and notify CMS and OHCA of the denial and make the supporting documentation available for review; and
(D) advise the client orally and in writing of the grievance and appeals process.
(b) To be eligible for Medicaid capitated payments, the participant must:
(1) be eligible for Title XIX services if institutionalized as determined by the Oklahoma Department of Human Services;
(2) be eligible for Medicaid State Plan services;
(3) be eligible for the Medicaid ADvantage program per OAC 317:35-17-3 and 317:35-17-5.
(c) To obtain and maintain eligibility, the participant must agree to accept the PACE providers and its contractors as the participant's only service provider. The participant may be held financially liable for services received without prior authorization except for emergency medical care.

317:35-18-6. Program benefits

(a) A provider agency must provide a participant all the services listed in 42 CFR 460.92 that are approved by the IDT. The PACE benefit package for all participants, regardless of the source of payment, must include but is not limited to the following:
(1) All Medicaid-covered services, as specified in the State's approved Medicaid plan.
(2) Interdisciplinary assessment and treatment planning.
(3) Primary care, including physician and nursing services.
(4) Social work services.
(5) Restorative therapies, including physical therapy, occupational therapy, and speech-language pathology services.
(6) Personal care and supportive services.
(7) Nutritional counseling.
(8) Recreational therapy.
(9) Transportation.
(10) Meals.
(11) Medical specialty services including, but not limited to the following:
(A) Anesthesiology.
(B) Audiology.
(C) Cardiology.
(D) Dentistry.
(E) Dermatology.
(F) Gastroenterology.
(G) Gynecology.
(H) Internal medicine.
(I) Nephrology.
(J) Neurosurgery.
(K) Oncology.

(L) Ophthalmology.
(M) Oral surgery.
(N) Orthopedic surgery.
(O) Otorhinolaryngology.
(P) Plastic surgery.
(Q) Pharmacy consulting services.
(R) Podiatry.
(S) Psychiatry.
(T) Pulmonary disease.
(U) Radiology.
(V) Rheumatology.
(W) General surgery.
(X) Thoracic and vascular surgery.
(Y) Urology.

(12) Laboratory tests, x-rays and other diagnostic procedures.

(13) Drugs and biologicals.

(14) Prosthetics, orthotics, durable medical equipment, corrective vision devices, such as eyeglasses and lenses, hearing aids, dentures, and repair and maintenance of these items.

(15) Acute inpatient care, including the following:
(A) Ambulance.
(B) Emergency room care and treatment room services.
(C) Semi-private room and board.
(D) General medical and nursing services.
(E) Medical surgical/intensive care/coronary care unit.
(F) Laboratory tests, x-rays and other diagnostic procedures.
(G) Drugs and biologicals.
(H) Blood and blood derivatives.
(I) Surgical care, including the use of anesthesia.
(J) Use of oxygen.
(K) Physical, occupational, respiratory therapies, and speech-language pathology services.
(L) Social services.

(16) Nursing facility care including:
(A) Semi-private room and board;
(B) Physician and skilled nursing services;
(C) Custodial care;
(D) Personal care and assistance;
(E) Drugs and biologicals;
(F) Physical, occupational, recreational therapies, and speech-language pathology, if necessary;
(G) Social services; and
(H) Medical supplies and appliances.

(17) Other services determined necessary by the interdisciplinary team to improve and maintain the participant's overall health status.

(b) The following services are excluded from coverage under PACE:

(1) Any service that is not authorized by the interdisciplinary team, even if it is a required service, unless it is an emergency service.

(2) In an inpatient facility, private room and private duty nursing services (unless medically necessary), and non-medical items for personal convenience such as telephone charges and radio or television rental (unless specifically authorized by the interdisciplinary team as part of the participant's plan of care).

(3) Cosmetic surgery, which does not include surgery that is required for improved functioning of a malformed part of the body resulting fran an accidental injury or for reconstruction following mastectomy.

(4) Experimental medical, surgical, or other health procedures.

(5) Services furnished outside of the United States, except as follows:
(A) in accordance with 42 CFR 424.122 through 42 CFR 424.124, and
(B) as permitted under the State's approved Medicaid plan.

317:35-18-7. Appeals process

(a) Internal appeals

(1) Any client who is denied program services is entitled to an appeal through the provider.

(2) If the client also chooses to file an external appeal, the provider must assist the client in filing an external appeal.

(b) External appeals may be filed by any client covered by:

(1) Medicaid through the OHCA legal division.

(2) Medicare but not Medicaid through the Centers for Medicare and Medicaid Services hearing process.

317:35-18-8. Enrollment

(a) The provider determines whether the applicant meets PACE enrollment requirements.

(b) The enrollment effective date is the first day of the month after the provider receives the signed enrollment form.

(c) Enrollment continues until the participant's death, regardless of changes in health status, unless either of the following actions occur:

(1) The participant voluntarily disenrolls.

(2) The participant is involuntarily disenrolled.

317:35-18-9. Continuation of enrollment

(a) At least annually, OHCA must reevaluate whether a participant needs the level of care for nursing facility services.

(b) At least annually, OKDHS will reevaluate the participant's financial eligibility for Medicaid.

(c) If the individual meets the state's medical eligibility criteria and the individual has an irreversible or progressive diagnosis or a terminal illness that could reasonable be expected to result in death in the next six months, and OHCA determines that there is no reasonable expectation of improvement or significant change in the condition because of severity of a chronic condition or the degree of impairment of functional capacity, OHCA will permanently waive the annual recertification requirement and the client may be deemed to be continually eligible for PACE. The assessment form must have sufficient documentation to substantiate the participant's prognosis and functional capacity.

(d) If OHCA determines that a PACE participant no longer meets the medical criteria for nursing facility level of care, the participant may be deemed to continue to be eligible for PACE until the next annual reassessment, if, in the absence of PACE services, it is reasonable to expect that the client would meet the nursing facility level of care criteria within the next six months.

(e) Participant enrollment continues when OHCA in consultation with the PACE organization, makes a determination of continued eligibility based on a review of the participant's medical record and plan of care.

317:35-18-10. Disenrollment (voluntary and involuntary)

(a) The client may voluntarily disenroll from PACE at any time without cause but the effective date of disenrollment must be the last day of the month.

(b) A participant may be involuntarily disenrolled for any of the following reasons:

(1) The participant fails to pay, or to make satisfactory arrangements to pay, any premium due the PACE organization after a 30-day grace period.

(2) The participant engages in disruptive or threatening behavior, as described in subsection (c) of this section.

(3) The participant moves out of the PACE program service area or is out of the service area for more than 30 consecutive days, unless the PACE organization agrees to a longer absence due to extenuating circumstances.

(4) The participant is determined to no longer meet the State Medicaid nursing facility level of care requirements and is not deemed eligible.

(5) The PACE program agreement with CMS and the State administering agency is not renewed or is terminated.

(6) The PACE organization is unable to offer health care services due to the loss of State licenses or contracts with outside providers.

(c) A participant may be involuntarily disenrolled for disruptive or threatening behavior. For purposes of this section, a participant who engages in disruptive or threatening behavior refers to a participant who exhibits either of the following:

(1) A participant whose behavior jeopardizes his or her health or safety, or the safety of others; or

(2) A participant with decision-making capacity who consistently refuses to comply with his or her individual plan of care or the terms of the PACE enrollment agreement.

(d) If a PACE organization proposes to disenroll a participant who is disruptive or threatening, the organization must document the following information in the participant's medical record:

(1) The reasons for proposing to disenroll the participant.

(2) All efforts to remedy the situation.

(e) A participant may be disenrolled involuntarily for noncompliant behavior.

(1) PACE organization may not disenroll a PACE participant on the grounds that the participant has engaged in noncompliant behavior if the behavior is related to a mental or physical condition of the participant, unless the participant's behavior jeopardizes his or her health or safety, or the safety of others.

(2) For purposes of this section, noncompliant behavior includes repeated noncompliance with medical advice and repeated failure to keep appointments.

(f) Before an involuntary disenrollment is effective, the State administering agency must review it and determine in a timely manner that the PACE organization has adequately documented acceptable grounds for disenrollment.

317:35-18-11. Data collection and reporting

The PACE provider must:

(1) collect and enter data into the DATA PACE system.

(2) generate and maintain monthly reports from the DATA PACE system.

(3) make the reports available to the OHCA.

(4) comply with all data requests as specified by the OHCA within 30 days of such requests.

[OAR Docket #06-1013; filed 5-22-06]

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

[OAR Docket #06-1021]

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317:35-19-14. [AMENDED]
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Agency provider rules are revised to remove inconsistencies in language regarding the Preadmission Screening and Resident Review (PASRR) program. Additional revisions are needed to provide appeal guidelines that are consistent with other appeal guidelines found in various Sections of the Oklahoma Administrative Code.
CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 19. NURSING FACILITY SERVICES

317:35-19-8. Pre-admission screening and resident review

(a) Federal Regulations govern the State's responsibility for Preadmission Screening and Resident Review (PASRR) of individuals with mental illness and mental retardation. PASRR applies to the screening or reviewing of all individuals ~~with~~ for mental illness or mental retardation or related conditions who apply to or reside in Medicaid certified nursing facilities regardless of the source of payment for the nursing facility services and regardless of the individual's or resident's known diagnoses. The NF must independently evaluate the Level I PASRR Screen regardless of who completes the form and determine whether or not to admit an individual to the facility. If an individual is admitted to the NF inappropriately, the NF is subject to recoupment of Medicaid funds and penalties imposed by ~~HCFA~~ CMS. Federal financial participation (FFP) may not be paid until results of any needed PASRR Level II evaluations are received. PASRR ~~does not apply to Medicare only or private pay only~~ is a requirement for nursing facilities with dually certified (both Medicare and Medicaid) beds. There are no PASRR requirements for Medicare skilled beds that are not dually certified, nor is PASRR required for individuals seeking residency in an intermediate care facility for the mentally retarded (ICF/MR).

(b) For Medicaid applicants, medical and financial eligibility determinations are also required.

317:35-19-9. PASRR screening process

(a) **Level I screen for PASRR.**

(1) OHCA Form LTC-300A, Long Term Care Pre-admission Screen, Section I, must be completed by ~~an authorized official of OKDHS, of the nursing facility, of the hospital or a physician. An authorized official is defined as~~:

(A) A licensed nurse from OKDHS;

(B) The nursing facility administrator or co-administrator;

(C) A licensed nurse, social service director, social worker, or other authorized NF official or designee from the nursing facility~~, hospital, or physician's office~~; or

(D) A licensed nurse, social service director, or social worker from the ~~nursing facility or~~ hospital~~; or~~

~~(E) A social worker from the nursing facility or the hospital~~.

(2) Section II of the LTC-300A must be completed by an authorized NF official or designee.

(~~2~~3) Prior to admission, ~~The~~ the authorized NF official ~~as defined in (1) of this subsection~~ must evaluate the properly completed OHCA Form LTC-300A and the Minimum Data Set (MDS), if available, as well as all other readily available medical and social information, to determine if there currently exists any indication of mental illness (MI), mental retardation (MR), or other related condition, or if such condition existed in the applicant's past history. This evaluation constitutes the Level I PASRR Screen and is utilized in determining whether or not a Level II is necessary prior to allowing the patient to be admitted.

(~~3~~4) The nursing facility is responsible for determining from the evaluation whether or not the patient can be admitted to the facility. A yes response to any question from the Level I Screen will result in a consultation with LOCEU for the Level II assessment prior to admission. The NF is also responsible for consulting with the LOCEU regarding any MI/MR/related condition information that becomes known either from completion of the MDS or throughout the resident's stay. The original LTC-300A form and copy, as well as a copy of the MDS, comprises the PASRR eligibility information packet, and is to be submitted to the LOCEU by mail within 30 days of the resident's admission.

(~~4~~5) Upon receipt and review of the ~~medical~~ PASRR eligibility information packet, the ~~area nurse re-evaluates~~ LOCEU may re-evaluate whether a Level II PASRR assessment may be required ~~by consultation with LOCEU staff~~. If a Level II assessment is not required, as determined by the LOCEU, the area nurse, or nurse designee, documents this and continues with the process of determining medical eligibility. If a Level II is required, a medical decision is not made until the area nurse is notified of the outcome of the Level II assessment. The results of the Level II assessment are considered in the medical eligibility decision. The area nurse, or nurse designee, makes the medical eligibility decision within ten working days of receipt of the medical information when a Level II assessment is not required. If a Level II assessment is

required, the area nurse makes the decision within five working days if appropriate.

(b) **Pre-admission Level II assessment for PASRR.** The authorized official ~~as defined in (a)(1) of this Section~~ is responsible for consulting with the OHCA LOCEU in determining whether a Level II assessment is necessary. The decision for Level II assessment is made by the LOCEU.

(1) Any one of the following three circumstances will allow a patient to enter the nursing facility without being subjected to a Level II PASRR assessment~~.~~ :

(A) The patient has no current indication of mental illness or mental retardation or other related condition and there is no history of such condition in the patient's past.

(B) The patient does not have a diagnosis of mental retardation or related condition~~, does not have a primary diagnosis of a major mental illness, and a primary or secondary diagnosis of dementia including dementia of the Alzheimer's type is documented in writing by a physician~~.

(C) The patient has indications of mental illness or mental retardation or other related condition, but is not a danger to self and/or others, and is being released from an acute care hospital as part of a medically prescribed period of recovery (~~exempted hospital discharge~~ Exempted Hospital Discharge). If an individual is admitted to an NF based on Exempted Hospital Discharge, it is the responsibility of the NF to ensure that the individual is either discharged by the 30th day or that a Level II has been requested and is in process. Exempted Hospital Discharge is allowed only if all of the following three conditions are met:

(i) The individual must be admitted to the NF directly from a hospital after receiving acute inpatient care at the hospital (not including psychiatric facilities);

(ii) The individual must require NF services for the condition for which he/she received care in the hospital; and

(iii) The attending physician must certify before admission to the facility that the individual is likely to require less than 30 days of nursing facility services. The nursing facility will be required to furnish documentation to the OHCA upon request.

(2) If the patient has current indications of mental illness or mental retardation or other related condition, or if there is a history of such condition in the patient's past, the patient cannot be admitted to the nursing facility until the LOCEU is contacted to determine if a Level II PASRR assessment must be performed. ~~Instead, a~~ Results of any Level II PASRR assessment ordered ~~must be performed and the results~~ must indicate that nursing facility care is appropriate prior to allowing the patient to be admitted.

~~(3) The State MR (OKDHS/Developmental Disabilities Services Division) and MI (Department of Mental Health and Substance Abuse Services) authorities have developed advance group determinations by category that take into account certain diagnoses, levels of severity of illness, or need for a particular service which clearly indicate that admission to a NF is normally needed, or that the provision of specialized services (SS) is not normally needed. These determinations are actual Level II decisions and not exemptions from the screening process. For those for whom a categorical determination is made, both the level of care determination and the specialized services determination must be addressed. Only negative categorical specialized services determinations can be made. All positive determinations concerning the need for specialized services must be based on a more extensive individualized evaluation.~~

~~(A) The State MI or MR authority may make an advance group determination that NF services are needed in the following categories (after NF receives approval from LOCEU):~~

(3) The OHCA Level of Care Evaluation Unit authorizes Advance Group Determinations for the MI and MR Authorities in the categories listed in the following categories listed in (A) through (C) of this paragraph. Preliminary screening by the LOCEU should indicate eligibility for nursing facility level of care prior to consideration of the provisional admission.

(~~i~~A) **Provisional admission in cases of delirium.** Any person with mental illness, mental retardation or related condition who is not a danger to self and/or others, may be admitted to a Medicaid certified NF if the individual is experiencing a condition that precludes screening, i.e., effects of anesthesia, medication, unfamiliar environment, severity of illness, or electrolyte imbalance.

(~~I~~i) A Level II evaluation is completed immediately after the delirium clears. LOCEU must be provided with written documentation by a physician that supports the individual's condition which allows provisional admission as defined in (i) of this subparagraph.

(~~II~~ii) Payment for NF services will not be made after the provisional admission ending date. If an individual is determined to need a longer stay, the individual must receive a Level II evaluation before continuation of the stay may be permitted and payment made for days beyond the ending date.

(~~ii~~B) **Provisional admission in emergency situations.** Any person with a mental illness, mental retardation or related condition, who is not a danger to self and/or others, may be admitted to a Medicaid certified nursing facility for a period not to exceed seven days pending further assessment in emergency situations requiring protective services. The request for Level II evaluation must be made immediately upon admission to the NF if a longer stay is anticipated. LOCEU must be provided with written documentation from Adult Protective Services or the nursing facility which supports the individual's emergency admission.

Payment for NF services will not be made beyond the emergency admission ending date.

(~~iii~~C) **Respite care admission.** Any person with mental illness, mental retardation or related condition, who is not a danger to self and/or others, may be admitted to a Medicaid certified nursing facility to provide respite to in-home caregivers to whom the individual is expected to return following the brief NF stay. Respite care may be granted up to 15 consecutive days per stay, not to exceed 30 days per calendar year.

(~~I~~i) In rare instances, such as illness of the caregiver, an exception may be granted to allow 30 consecutive days of respite care. However, in no instance can respite care exceed 30 days per calendar year.

(~~II~~ii) Respite care must be approved by LOCEU staff prior to the individual's admission to the NF. The NF provides the LOCEU with written documentation concerning circumstances surrounding the need for respite care, the date the individual wishes to be admitted to the facility, and the date the individual is expected to return to the caregiver. Payment for NF services will not be made after the respite care ending date.

(c) **PASRR Level II resident review.** The resident review is used primarily as a ~~followup~~ follow-up to the pre-admission assessment.

(1) The nursing facility's routine resident assessment will identify those individuals previously undiagnosed as MR or MI. A new condition of MR or MI must be referred to LOCEU by the NF for determination of the need for the Level II. The facility's failure to refer such individuals for a Level II assessment may result in recoupment of funds and/or penalties from ~~HCFA~~ CMS.

(2) A Level II resident review ~~must~~ may be conducted the following year for each resident of a nursing facility who ~~has mental illness or mental retardation or other related condition when there is a significant change in the resident's physical or mental condition~~ was found to experience a serious mental illness with no primary diagnosis of dementia on his or her pre-admission Level II to determine whether, because of the resident's physical and mental condition, the resident requires specialized services.

(3) A Level II resident review may be conducted for each resident of a nursing facility who has mental illness or mental retardation or other related condition when there is a significant change in the resident's mental condition. If such a change should occur in a resident's condition, it is the responsibility of the nursing facility to ~~notify~~ have a consultation with the LOCEU ~~of~~ concerning the need to conduct a resident review.

(4) Individuals who were determined to have a serious mental illness (as defined by ~~HCFA~~ CMS) on their last PASRR Level II evaluation will receive a resident review at least within one year of the previous evaluation.

(d) **Results of pre-admission Level II assessment and Resident Review.** Through contractual arrangements between the Oklahoma Health Care Authority and the Mental Illness/Mental Retardation authorities/Community Mental Health Centers, individualized assessments are conducted and findings presented in written evaluative reports. The reports recommend if nursing facility services are needed, if specialized services or ~~lesser~~ less than specialized services are needed ~~and what types~~, and if the individual meets the federal PASRR definition of mental illness or mental retardation or related conditions. Evaluative reports are delivered to the Authority LOCEU within federal regulatory and state contractual timelines to allow the LOCEU to process formal, written notification to patient, guardian, NF and significant others.

(e) **Evaluation of pre-admission Level II or Resident Review assessment to determine Medicaid medical eligibility for long term care.** The determination of medical eligibility for care in a nursing facility is made by the area nurse (or nurse designee) unless the individual has mental retardation or related condition or a serious mental illness (as defined by ~~HCFA~~ CMS). The procedures for obtaining and submitting information required for a decision are outlined in this subsection. When an active long term care patient enters the facility and nursing care is being requested:

(1) The pre-admission screening process must be performed and must allow the patient to be admitted.

(2) The facility will notify the local county office by the OKDHS form ABCDM-83, Notification Regarding Patient in a Nursing Facility, Intermediate Care Facility for the Mentally Retarded or Hospice and ABCDM-96 form, Management of Recipient's Funds, of the client admission.

(3) The local county office will send the NF the OKDHS form ABCDM-37D, Notice to Nursing Care Facility or LTCA, indicating actions that are needed or have been taken regarding the client.

317:35-19-14. New admissions, readmissions, interfacility transfers, and same level of care program transfers

The Preadmission Screening process does not apply to readmission of an individual ~~to an NF after transfer for a continuous hospital stay, and then~~ back to the same NF following a continuous medical hospital stay. There is no specific time limit on the length of absence from the nursing facility for the hospitalization. Inter-facility transfers are also subject to ~~resident reviews rather than~~ preadmission screening. In the case of transfer of a resident from an NF to a hospital~~,~~ or to another NF, ~~or to Home and Community Base Waiver services,~~ the transferring NF is responsible for ensuring that copies of the resident's most recent PASRR LTC-300A~~, resident assessment reports,~~ and any PASRR evaluations accompany the transferring resident. The receiving NF must submit an updated LTC-300A that reflects the resident's current status to LOCEU within 30 days of the transfer. Failure to do so could result in ~~possible~~ recoupment of funds.

317:35-19-16. PASRR appeals process

(a) Any individual who has been adversely affected by any PASRR determination made by the State in the context of either a preadmission screening or resident review may appeal that determination by requesting a fair hearing. If the individual does not consider the PASRR decision a proper one, the individual or their authorized representative must contact the local county ~~DHS~~ OKDHS office to discuss a hearing. Forms for requesting a fair hearing (~~OAC 340:2, Appendix G~~ OKDHS form H-1, Request for a Fair Hearing), as well as assistance in completing the forms, can be obtained at the local county OKDHS office. Any request for a hearing must be made no later than 30 days following the date of written notice. There is no distinction between the Medicaid and non-Medicaid patient; therefore, all individuals seeking an appeal have the same rights, regardless of source of payment. Level I determinations are not subject to appeal.

(b) When the individual is found to experience MR or MI through the Level II screen, the PASRR determination made by the MR/MI authorities cannot be countermanded by the state Medicaid agency, either in the claims process or through other utilization control/review processes, or by the state survey and certification agency. Only appeals determinations made through the fair hearing process may overturn a PASRR determination made by the MR/MI authorities.

[OAR Docket #06-1021; filed 5-22-06]

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 45. OKLAHOMA EMPLOYER AND EMPLOYEE PARTNERSHIP FOR INSURANCE COVERAGE

[OAR Docket #06-1007]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
317:45-1-2. [NEW]
Subchapter 3. Carriers
317:45-3-1. [NEW]
Subchapter 7. Employer Eligibility
317:45-7-1. through 317:45-7-2. [NEW]
317:45-7-5. [NEW]
Subchapter 9. Employee Eligibility
317:45-9-1. [NEW]
(Reference APA WF # 05-27)
AUTHORITY:
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Subchapter 1. General Provisions
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INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
Revising rules for the Oklahoma Employer and Employee Partnership for Insurance Coverage program to require: (1) applications to be date and time stamped by regions; (2) regions to be established based on population density statistics as determined through local and national data and to be periodically adjusted to assure statewide program availability; (3) employers exempt from filing an OES-3 form to verify their employee count; (4) the Qualified Health Plan coverage to begin on the first day of the month and continue through the last day of the month; (5) the employer to notify the TPA of new hires within 30 days of eligibility for the health plan; and (6) the eligibility period to end the last day of the 12th month or when coverage through a health plan requires renewal or an open enrollment period occurs.
CONTACT PERSON:
Joanne Terlizzi at 522-7272

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

317:45-1-2. Program limitations

(a) The O-EPIC program is contingent upon sufficient funding that is collected and dispersed through a revolving fund within the State Treasury designated as the "Health Employee and Economy Improvement Act (HEEIA) Revolving Fund". This fund is a continuing fund, not subject to fiscal year limitations.

(b) All monies accruing to the credit of the fund are budgeted and expended by the OHCA to implement the Program.

(c) The Program is funded through a portion of monthly proceeds from the Tobacco Tax, House Bill 2660, that are collected and dispersed through the HEEIA revolving fund.

(d) The Program is limited in scope such that budgetary limits are not exceeded. If at any time it becomes apparent there is risk the budgetary limits may be exceeded, OHCA must take action to ensure the O-EPIC program continues to operate within its fiscal capacity.

(1) O-EPIC may limit eligibility based on:

(A) the federally-approved capacity of the O-EPIC services for the Health Insurance Flexibility and Accountability (HIFA) Waiver/1115 Waiver; and

(B) Tobacco Tax collections.

(2) The O-EPIC program may limit eligibility when the utilization of services is projected to exceed the spending authority, or, may suspend new eligibility determinations instead, establishing a waiting list of employers.

(A) Employers, not previously enrolled and participating in the program, submitting new applications for the O-EPIC program are placed on a waiting list. These applications are date and time stamped by region when received by the TPA. Regions are established based on population density statistics as determined through local and national data and may be periodically adjusted to assure statewide availability.

(B) The waiting list utilizes a "first in - first out" method of selecting eligible employers by region.

(C) When an employer group is determined eligible and moves from the waiting list to active participation, the employer must submit a new application. All eligible employees of that employer will have an opportunity to participate in O-EPIC during the employer's eligibility period.

(D) Only employers will be subject to the waiting list. (E) Enrolled employers who are currently participating in the O-EPIC program are not subject to the waiting list.

(i) If the employer hires a new employee after the employer's program eligibility begins, the new employee is allowed to participate in O-EPIC during the employer's current eligibility period.

(ii) If the employer has an employee who has a Qualifying Event after the employer's program eligibility begins, the employee is allowed to make changes pertaining to the Qualifying Event.

SUBCHAPTER 3. CARRIERS

317:45-3-1. Carrier eligibility

Carriers must file a quarterly financial statement with the Oklahoma Insurance Department and submit requested information to OHCA for each health plan to be considered for qualification. Carriers must also provide the name, address, telephone number, and, if available, email address of a contact individual who is able to verify O-EPIC employer enrollment status in a Qualified Health Plan.

SUBCHAPTER 7. EMPLOYER ELIGIBILITY

317:45-7-1. Employer application and eligibility requirements for O-EPIC

(a) In order for an employer to be eligible to participate in the O-EPIC program the employer must:

(1) have no more than a total of 25 employees on its payroll. The number of employees is determined based on the third month employee count of the most recently filed OES-3 form with the Oklahoma Employment Security Commission (OESC) and that is in compliance with all requirements of the OESC. If the employer is exempt from filing an OES-3 form, in accordance with OHCA rules, this determination is based on appropriate supporting documentation, such as the W-2 Summary Wage and Tax form as required under OAC 365:10-5-156 to verify employee count;

(2) have a business that is physically located in Oklahoma;

(3) be currently offering or intending to offer within 60 calendar days an O-EPIC Qualified Health Plan. The Qualified Health Plan coverage must begin on the first day of the month and continue through the last day of the month;

(4) offer Qualified Health Plan coverage to employees in accordance with Oklahoma Small Business Statutes, Oklahoma Department of Insurance, and all other regulatory agencies;

(5) contribute a minimum 25 percent of the eligible employee monthly health plan premium;

(b) An employer who meets all requirements listed in subsection (a) of this Section must complete and submit an employer enrollment packet to the TPA.

(c) The employer must provide its Federal Employee Identification Number (FEIN).

(d) The employer must notify the TPA, within 5 working days from occurrence, of any O-EPIC employee's termination or resignation. Additionally, the employer must notify the TPA of new hires within 30 days of eligibility for the health plan.

317:45-7-2. Employer eligibility determination

Eligibility for employers is determined by the TPA using the eligibility requirements listed in OAC 317:45-7-1. An employer determined eligible for O-EPIC is approved for up to a 12 month period. The eligibility period begins on the first day of the month following the date of approval. The eligibility period ends the last day of the 12th month or when coverage through a health plan requires renewal or an open enrollment period occurs. The TPA notifies the employer of the eligibility decision for employer and employees.

317:45-7-5. Reimbursement

In order to receive a premium subsidy, the employer must submit the current health plan invoice to the TPA via fax or mail.

SUBCHAPTER 9. EMPLOYEE ELIGIBILITY

317:45-9-1. Employee eligibility requirements

(a) Employee premium assistance applications are made with the TPA. Employees of an O-EPIC eligible employer must apply within 30 days from the date the employer is approved for O-EPIC or within 30 days from the date they are hired to work for a participating employer and are eligible for enrollment in the health plan. Employees may also apply during the employer's health plan open enrollment period.

(b) The TPA electronically submits the application to the Oklahoma Department of Human Services (OKDHS) for a determination of eligibility. The eligibility determination is processed within 30 days from the date the application is received by the TPA. The employee is notified in writing of the eligibility decision.

(c) All O-EPIC eligible employees described in this Section are enrolled through their Employer Sponsored Health Plan (ESHP). Employees eligible for O-EPIC must:

(1) have a household income at or below 185% of the Federal Poverty Level;

(2) be US citizens or aliens as described in OAC 317:35-5-27;

(3) be Oklahoma residents;

(4) provide his/her social security number;

(5) be not currently enrolled in, or have applied for, Medicaid/Medicare;

(6) be employed with a qualified employer at a business location in Oklahoma;

(7) be age 19 through age 64;

(8) be eligible for enrollment in the employer's Qualified Health Plan;

(9) be working for employers (if multiple) who all meet the eligible employer guidelines;

(10) select one of the Qualified Health Plans the employer is offering; and

(11) make application within 30 days of the employer being approved or have a Qualifying Event.

(d) An employee's spouse is eligible for O-EPIC if:

(1) the employer's health plan includes coverage for spouses;

(2) the employee is eligible for O-EPIC;

(3) if employed, the spouse's employer meets O-EPIC employer guidelines listed in OAC 317:45-7-1(a)(1)-(2); and

(4) the spouse is enrolled in the same health plan as the employee.

(e) If an employee or spouse is eligible for multiple O-EPIC Qualified Health Plans, each may receive a subsidy under only one health plan.

[OAR Docket #06-1007; filed 5-22-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 25. ENTRIES AND DECLARATIONS

[OAR Docket #06-1146]

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PERMANENT final adoption
RULE:
325:25-1-5. Entries [AMENDED]
325:25-1-17. Coupling of Entries [AMENDED]
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75 Oklahoma Statutes §§302, 305, and 307; Title 3A O.S., §204(A); Oklahoma Horse Racing Commission
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Not Applicable
ANALYSIS:
Amendment to Rule 325:25-1-5 reflects the current use of InCompass, a software application that includes entry data, rather than the earlier use of a written entry card. Amendment to Rule 325:25-1-17 clarifies the situation when a race is to be divided.
CONTACT PERSON:
Bonnie Morris, Assistant to the Administrator, Oklahoma Horse Racing Commission, Shepherd Mall, 2614 Villa Prom, Oklahoma City, OK 73107, (405) 943-6472

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

325:25-1-5. Entries

No horse shall be entered in more than one (1) race on the same day. No person shall enter or attempt to enter a horse in a race unless such entry is a bona fide entry made with the intention that such horse is to compete in the race for which entry is made except, if race conditions permit, for entry back in finals or consolations involving physically disabled or dead qualifiers for purse payment purposes. ~~Entries shall be in writing on the entry card provided by the organization and shall be made and signed by the Owner or Trainer or his/her~~

~~Assistant Trainer, or a licensed Authorized Agent of such Owner or Trainer of the horse. Entries made by telephone are valid if properly confirmed when signing the entry card. No horse shall be allowed to start unless the entry card has been signed by the Owner or Trainer or his/her Assistant Trainer, or licensed Authorized Agent of the Trainer.~~ No Trainer who is an Owner or part Owner of a horse may enter that horse under the name of another Trainer in the same race.

325:25-1-17. Coupling of entries

In no case shall more than two (2) horses having common ties through ownership, training, or lease be entered in a purse race (overnight). When making a double entry, the second same owner entry drawn shall have no preference over any single entry in purse races, excepting a preference over an "in-today" horse. If horses are entered in the same race owned wholly or in part by the same Owner and trained by the same Trainer, then that entry shall be coupled for wagering purposes. At the time of entry, a preference must be made to the end that each interest may have an entry in each division should the race be divided. For different Owners, an organization licensee, with approval of the Stewards, may allow for each entrant to have an equal shake to draw into a race providing the horse(s) have preference. Horses with identical ownership interests regarding prepayment, nomination and stakes races must be coupled in races which have an incremental purse payout from first to last. If a race is to be divided, an additional conditional entry may be accepted from any interest. Each such entry may have a joint entry. All divided races will be considered separate races.

[OAR Docket #06-1146; filed 5-26-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 40. VETERINARIAN PRACTICES

[OAR Docket #06-1147]

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PERMANENT final adoption
RULE:
325:40-1-5. Veterinarian Reports [AMENDED]
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75 Oklahoma Statutes §§302, 305, and 307; Title 3A O.S., §204(A); Oklahoma Horse Racing Commission
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Not Applicable
ANALYSIS:
After months of research, consultation with experts in the field, and careful consideration, the Commission's The Ad Hoc Committee on Drug Testing Rules concluded that Oklahoma's current Rules pertaining to Medication and Equine Drug Testing Procedures and Veterinarian Practices are contrary to the rapidly changing science and technology which exists with regard to procedures for effective use of safe and necessary therapeutic medication. In addition, many states throughout the country, including but not limited to surrounding states in the region, have made similar changes to their equine drug testing rules.
CONTACT PERSON:
Bonnie Morris, Assistant to the Administrator, Oklahoma Horse Racing Commission, Shepherd Mall, 2614 Villa Prom, Oklahoma City, OK 73107, (405) 943-6472

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

325:40-1-5. Veterinarian reports

(a) Every Veterinarian licensed by the Commission:

(1) Who treats any horse within the enclosure for any contagious or communicable disease shall immediately report the treatment to the Official Veterinarian in writing on a form approved by the Commission.

(2) Who treats ~~an entered~~ a horse ~~as herein defined~~ within twenty-four (24) hours prior to post-time except as provided in ~~this Chapter (Salix) 45~~ Rule 325:45-1-20 shall submit daily reports on a form approved by the Commission to the Official Veterinarian showing all medication and other substances which the Veterinarian prescribed, administered or dispensed. ~~For purposes of the provisions of this Chapter, an entered horse is defined as any horse which appears on the overnight sheet and has either drawn a position for a race or is an also eligible from the time that the horse is entered in the race condition or forty eight (48) hours prior to the first post time on the race day in which the horse will race, whichever is less, and until midnight following the race for which the horse is scheduled to race.~~ The form shall include but not be limited to the name and location of the horse treated, the name of the Trainer, the time of treatment or examination, the probable diagnosis, and the medication administered.

(3) Who treats any horse or performs other professional services ~~within the enclosure of an organization licensee during a race meeting~~ to horses ~~eligible to participate~~ participating in any race meeting conducted in Oklahoma shall be responsible for maintaining ~~treatment~~ medical records ~~or a log book~~ in ~~strict~~ compliance with the Oklahoma Veterinary Practice Act, O.S., Title 59, § 698.2 to § 698.28 on all horses for which they prescribe, administer, or dispense medication or perform other professional services. The treatment records or log book information shall include but not be limited to the date and time of treatment/service; name of racetrack; Veterinarian's printed name and signature; registered name of horse; Trainer's name; barn number or location of horse; race date and race number, if any; medication and dosage; and reason for treatment/services. These records shall be available to the Commission and the Stewards ~~upon~~ within twenty-four (24) hours of request unless otherwise provided by the Board of Stewards or Commission Executive Director. Failure to comply shall subject the Veterinarian to disciplinary action by the Board of Stewards.

(b) Any such medical record and any report of treatment as described in (a) of this Section is confidential; and its content shall not be disclosed except in a proceeding before the Stewards or the Commission~~, or~~ in the exercise of the Commission's jurisdiction or forwarding such information to the Oklahoma Board of Veterinarian Medical Examiners.

[OAR Docket #06-1147; filed 5-26-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 45. MEDICATION AND EQUINE TESTING PROCEDURES

[OAR Docket #06-1148]

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RULE:
325:45-1-2. Definitions [AMENDED]
325:45-1-4. Drugs or medication [AMENDED]
325:45-1-5. Power to have tested [AMENDED]
325:45-1-6. Authorized Medication [AMENDED]
325:45-1-7. Authority to test sample [AMENDED]
325:45-1-8. Furosemide (Salix) use with detention barn [REVOKED]
325:45-1-9. Furosemide (Salix) use without detention barn [AMENDED]
325:45-1-10. Conditional Furosemide (Salix) use [REVOKED]
325:45-1-11. Trainer responsibility - Furosemide (Salix) [AMENDED]
325:45-1-12. Bleeder List [AMENDED]
325:45-1-13. Racing after bleeding [AMENDED]
325:45-1-15. Equine drug testing laboratory reports [AMENDED]
325:45-1-17. Equipment for official testing [AMENDED]
325:45-1-18. Taking of samples [AMENDED]
325:45-1-19. Laboratories approved and designated by the Commission [AMENDED]
325:45-1-20. Split samples [AMENDED]
325:45-1-22. Phenylbutazone use [AMENDED]
325:45-1-23. Trainer responsibility - Phenylbutazone [AMENDED]
325:45-1-24. Drug classification and penalties [AMENDED]
325:45-1-25. Use, administration and regulation of Furosemide (Salix) [REVOKED]
325:45-1-26. Primary laboratory's request for additional test time [NEW]
325:45-1-27. Prohibited practices [NEW]
325:45-1-28. Report of treatment: Procaine penicillin administration [NEW]
325:45-1-29. Environmental contaminants and substances of human use [NEW]
AUTHORITY:
75 Oklahoma Statutes §§302, 305, and 307; Title 3A O.S., §204(A); Oklahoma Horse Racing Commission
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Superseded rules:
325:45-1-2. Definitions [AMENDED]
325:45-1-4. Drugs or medication [AMENDED]
325:45-1-5. Power to have tested [AMENDED]
325:45-1-6. Authorized Medication [AMENDED}
325:45-1-7. Authority to test sample [AMENDED]
325:45-1-8. Furosemide (Salix) use with detention barn [REVOKED]
325:45-1-9. Furosemide (Salix) use without detention barn [AMENDED]
325:45-1-10. Conditional Furosemide (Salix) use [REVOKED]
325:45-1-11. Trainer responsibility - Furosemide (Salix) [AMENDED]
325:45-1-12. Bleeder List [AMENDED]
325:45-1-13. Racing after bleeding [AMENDED]
325:45-1-15. Equine drug testing laboratory reports [AMENDED]
325:45-1-17. Equipment for official testing [AMENDED]
325:45-1-18. Taking of samples [AMENDED]
325:45-1-19. Laboratories approved and designated by the Commission [AMENDED]
325:45-1-20. Split samples [AMENDED]
325:45-1-22. Phenylbutazone use [AMENDED]
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325:45-1-29. Environmental contaminants and substances of human use [NEW]
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Not Applicable
ANALYSIS:
After months of research, consultation with experts in the field, and careful consideration, the Commission's The Ad Hoc Committee on Drug Testing Rules concluded that Oklahoma's current Rules pertaining to Medication and Equine Drug Testing Procedures and Veterinarian Practices are contrary to the rapidly changing science and technology which exists with regard to

procedures for effective use of safe and necessary therapeutic medication. In addition, many states throughout the country, including but not limited to surrounding states in the region, have made similar changes to their equine drug testing rules.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

325:45-1-2. Definitions

In addition to the definitions provided in Section 200.1 of Title 3A, of the Oklahoma Statutes, the following words or terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"Act" means the Oklahoma Horse Racing Act [3A:200 et seq.]

"Assistant trainer" means a person qualified and licensed by the Commission as an Assistant Trainer.

"Authorized agent" means a person licensed by the Commission and appointed by a written notarized affidavit by the Owner in whose behalf the Agent will act. Said affidavit must be on file with the Commission.

"Bleeder" means a horse which during or following exercise or the race is observed to be shedding blood from one or both nostrils, or the mouth, or hemorrhaging in the lumen of the respiratory tract.

"Bleeder list" means a tabulation of all bleeders which tabulation shall be maintained by the Commission.

~~**"Clear and convincing evidence"** means that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of allegations sought to be established.~~

"Commission-Sanctioned Thresholds" mean threshold levels identified pursuant to a directive promulgated by the Commission as authorized by Oklahoma Statute Title 3A, Section 205.2(H) based upon scientific research and industry established standards which studies have shown have no pharmacological effect on the performance of the horse. Said directive shall be conspicuously posted within the enclosure by the Official Veterinarian.

"Commissioner" means a member of the Oklahoma Horse Racing Commission.

"Conditions of a race" means the qualifications which determine the eligibility of a horse to be entered in a race.

"Controlled substance" means any substance included in the five classification schedules of the Oklahoma Uniform Controlled Dangerous Substances Act.

"Day" means a 24-hour period ending beginning at midnight.

"Drug (medication)" means a substance foreign to the normal physiology of the horse.

"Foreign substances" means all substances except those which exist naturally in the untreated horse at normal physiological concentration and shall include but not be limited to all narcotics, stimulants, or depressants.

"Horse" means:

(A) any equine including and designated as mare, filly, stallion, colt, ridgeling, or gelding registered for racing;

(B) an entire equine male five years of age and older.

"Medication" means a substance other than food intended to affect the structure or any function of the body of a human or a horse.

"Occupation license" means a state requirement for any person acting in any capacity pursuant to provisions of the Act.

"Official Veterinarian" means a person qualified and licensed by the Commission as Official Veterinarian.

"Organization license" means a state requirement for any person desiring to conduct a race meeting in Oklahoma within the minimum standards as required by the Act and the rules of the Commission.

"Owner" means any person who holds in whole or in part, any right, title or interest in a horse or an organization licensee or any person who is a lessee of a horse and has been duly issued a currently-valid Owner license as a person responsible for such horse.

"Prima Facie evidence" means evidence that, until its effect is overcome by another evidence, will suffice as proof of fact in issue.

~~**"Preponderance of evidence"** means greater weight of evidence, or evidence which is more credible.~~

"Primary Laboratory" means the laboratory approved by the Commission to be used for analysis of urine, blood or other specimens.

"Program" means the published listing of all contests and contestants for a specific performance.

"Race" means a contest between horses.

"Race day" means a day during a race meeting when pari-mutuel wagering occurs on live races conducted at that racetrack.

"Racing Veterinarian" means a person qualified and licensed by the Commission as Racing Veterinarian.

"Referee Laboratory" means a Commission-approved laboratory which accepts referee/split samples previously reported positive for prohibited substances or drugs by the Primary Laboratory.

"Restricted area" means any area within the enclosure where access is limited to licensees whose occupation requires access. Those areas which are restricted shall include but not be limited to the barn area, paddock, test barn, Stewards' tower, racecourse, mutuel line and money rooms, or any other area designated restricted by the organization licensee or the Commission, or both. Signs giving notice of restricted access shall be prominently displayed at all entry points.

"Rules" means the rules adopted by the Commission to implement the provisions of the Act.

"Salix list" means a tabulation of all horses which are authorized by the Official Veterinarian for race day use of Salix (furosemide).

"Steward" means a duly appointed Racing Official with powers and duties specified by statutes or rules.

"Substantial evidence" means evidence which a ~~reasoning mind~~ reasonable person would accept as sufficient to support a particular conclusion and consists of more than a mere scintilla of evidence but may be ~~somewhat~~ less than a preponderance of the evidence.

"Trainer" means a person qualified and licensed by the Commission as a Trainer.

"Veterinarian" means a person licensed to practice veterinary medicine by the State of Oklahoma and licensed as a veterinarian by the Commission.

"Week" means a ~~calendar week~~ seven (7) day period.

"Year" means a ~~calendar year~~ a 365 day period.

325:45-1-4. Drugs or medication

Except as authorized by the provisions of this Chapter and Chapter 40 of this Title, no drug or medication shall be administered to any horse ~~prior to or during any race~~ within 24 hours of a race in which a horse is entered. Presence of any drug or its metabolites or analogs, any substance foreign to the natural horse, or Furosemide (Salix) or Phenylbutazone exceeding the Commission-established tolerance level found in the testing sample of a horse participating in a Commission-sanctioned race may result in disqualification by the Stewards. When a horse is disqualified because of an infraction of this Section, except as provided in 325:45-1-9 and in 325:45-1-22, the Owner or Owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned.

325:45-1-5. Power to have tested

As a safeguard against the prohibited use of drugs, medication, and substances foreign to the natural horse, and against the use of Furosemide (Salix) or Phenylbutazone in excess of the Commission-approved tolerance level, a blood, urine or other acceptable sample shall be taken under the direction of the Official Veterinarian from the winner of every race and from such other horses as the Stewards or the Commission may designate [3A:208.11]. The costs of quantitative testing ~~for Furosemide (Salix) and Phenylbutazone~~ shall be the responsibility of the horse Owner.

325:45-1-6. Authorized medication

~~As authorized under the provisions of 3A O.S., §208.11, Furosemide (Salix) and Phenylbutazone are medications or drug substances that may be administered to a horse (treated horse), as prescribed in this Chapter, which is entered to compete in a race. Within limits established by the Commission, Furosemide (Salix), Phenylbutazone, their metabolites or analogs are the only substances foreign to the normal physiology of the horse which may be present in a blood or urine test sample from a horse designated to have received a pre-race administration of Furosemide (Salix) or Phenylbutazone. Except under the instructions of the Official Veterinarian or Racing Veterinarian for the purpose of removing a horse from the Veterinarian's List or to facilitate the collection of a post-race urine sample, Furosemide (Salix) shall be permitted only after the Official Veterinarian has placed the horse on the Bleeder list and under the conditions as specified in 325:45-1-8, 325:45-1-9, and 325:45-1-10.~~

(a) The Commission recognizes that therapeutic medications are necessary to preserve the health and welfare of horses and that horses in training, like all other athletes, may at times require the administration of certain therapeutic medications to preserve their health.

(b) As authorized under the provisions of 3A O.S., § 208.11, Furosemide (Salix) and Phenylbutazone are medications or drug substances that may be administered to a horse (treated horse), as prescribed in this Chapter, which is entered to compete in a race.

(c) Except as otherwise authorized by the Commission, a horse participating in a race shall not carry in its body any drug, medication, substance, or metabolic derivative that:

(1) is a narcotic;

(2) could serve as an anesthetic or tranquilizer; or

(3) could stimulate, depress, or affect the circulation, respiratory, cardiovascular, musculoskeletal or central nervous system of a horse;

(d) A medication, drug, substance, or metabolic derivative thereof that might mask or screen the presence of prohibited drugs, or prevent or delay testing procedures shall be prohibited.

(e) Therapeutic medications in excess of Commission-Sanctioned Threshold levels established by Commission Directive [3A:205.2(H)]. Said directive shall be conspicuously posted within the enclosure by the Official Veterinarian.

(f) Substances present in a horse in excess of concentrations at which substances could occur naturally shall be prohibited.

(g) It shall be prima facie evidence that a horse had been administered and carried a drug, medication, substance, or metabolic derivative thereof, prohibited by this Section while running a race if:

(1) a saliva, urine, blood or other sample or specimen from the horse was taken pursuant to Rule 325:45-1-16 in this Chapter; and

(2) the Primary Laboratory detected a drug, medication, substance, or metabolic derivative thereof, prohibited by or in excess of Commission-Sanctioned Threshold levels established by Commission Directive [3A:205.2(H)]. Said directive shall be conspicuously posted within the enclosure by the Official Veterinarian. The Affidavit submitted by the Primary Laboratory shall be supported by urine and.or plasma/serum results.

325:45-1-7. Authority to test sample

Prior to or following a race, a horse may be subjected to having a blood and/or ~~urine sample~~ serum or other specimen taken at the direction of the Official Veterinarian to determine quantitative Furosemide (Salix) and Phenylbutazone levels and/or the presence of other drugs which may be contained in the blood, ~~or~~ urine or other specimen sample. [3A:204(A)(14);

see also 3A:204.1B and 3A:208.11] It shall not be a violation of this Chapter unless the Primary Laboratory confirms the presence of therapeutic medications by plasma/serum results above the Commission-sanctioned levels.

325:45-1-8. Furosemide (Salix) use with detention barn [REVOKED]

~~The use of Furosemide (Salix) shall be permitted under the following circumstances:~~

~~(1) Furosemide (Salix) shall be administered at the direction of the Official Veterinarian or his/her designee no less than four hours prior to post time of the race for which the horse is entered.~~

~~(2) A horse qualified for a Furosemide (Salix) administration must report to the Detention Barn within time to comply with the four-hour administration requirement, as specified in (1) of this Section.~~

~~(3) The dose administered shall not exceed 250 mg. nor may be less than 150 mg.~~

~~(4) Administration must be controlled by using sealed vials and sterile disposable syringes and needles. Multiple dose vials shall be preserved in safekeeping by the Official Veterinarian for the practitioners between administrations.~~

~~(5) After treatment, the horse shall be required by the Commission to remain in the Detention Barn in the care, custody, and control of the Trainer or his/her designated representative under track and/or Commission security supervision until called to the saddling paddock.~~

~~(6) All costs incurred with the administration, injection, and blood and/or urine testing of or for Furosemide (Salix) shall be at the expense of the horse Owner.~~

~~(7) Such other conditions as may be approved by the Commission from time to time, which conditions shall be posted at the office of the Official Veterinarian.~~

325:45-1-9. Furosemide (Salix) use without detention barn

The use of Furosemide (Salix) shall be permitted under the following conditions:

(1) The dose shall be administrated intravenously.

(~~1~~2) The Commission has established a post race plasma concentration level not to exceed ~~50~~ 100 ng/ml of Furosemide (Salix).

(~~2~~3) Any treated horse which finished first, second or third shall be subject to having a blood and/or urine sample taken at the direction of the Official Veterinarian to determine the quantitative Furosemide (Salix) levels and/or the presence of other drugs which may be present in the blood or urine sample. The cost of such testing shall be at the expense of the Owner.

(~~3~~4) The permitted quantitative Furosemide (Salix) level (tolerance level) shall not exceed the tolerance level established by Commission directive [3A:205.2(H)]. Said directive shall be conspicuously posted within the enclosure by the Official Veterinarian.

(~~4~~5) The Stewards shall impose a fine of ~~Two Hundred Fifty~~ Five Hundred Dollars (~~$250.00~~ $500.00) for any Trainer ~~for~~ in violation ~~of paragraph (3)~~ of this Section for a first time offense. For a second time offense involving the same horse in a one (1) year period for violation ~~of paragraph (3)~~ of this Section, the Stewards shall impose a fine of ~~Two Hundred Fifty~~ One Thousand Dollars (~~$250.00~~ $1,000.00) ~~if it is a different horse; and if the second time offense is on the same horse, the Stewards shall impose a fine of One Thousand Dollars ($1,000.00)~~ unless the Trainer was not notified of the first offense prior to the horse running the second time, in which case the Stewards shall impose a fine of Five Hundred Dollars ($500.00). The Stewards shall impose a fine of Two Thousand Five Hundred Dollars ($2,500.00) and may suspend for up to one year the license of any person for a third time violation within a one (1) year period ~~of paragraph (3)~~ of this Section involving the same horse. When a Trainer has a third violation ~~involving the same horse~~ within a one (1) year period, the horse shall be disqualified and the Owner or Owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned unless the Trainer was not notified of the second offense prior to the horse running the third time, in which case the Stewards shall impose a fine of ~~One~~ Two Thousand, Five Hundred Dollars (~~$1,000.00~~ $2,500.00).

~~(5) Any subsequent violation of paragraph (3) of this Section by any person shall be referred, with recommendation from the Stewards, to the Commission for disciplinary action.~~

325:45-1-10. Conditional Furosemide (Salix) use [REVOKED]

~~An organization licensee shall have the authority to restrict the use of Furosemide (Salix), subject to Commission approval, in any race, category of racing, or race meeting. Any such proposed restriction shall be included in the organization licensee's application for license or application for race days and condition book.~~

325:45-1-11. Trainer responsibility - Furosemide (Salix)

(a) Should the chemical analysis of the urine, blood, ~~or~~ other sample or specimen taken from a horse under the Trainer's supervision show that the drug Furosemide (Salix) is present in an amount exceeding the Commission-approved tolerance level, it shall be taken as prima facie evidence that the same was administered by or with the knowledge of the Trainer or person or persons under his/her supervision having care or custody of such horse. At the discretion of the Stewards or Commission, the Trainer and all other persons shown to have had care or custody of such horse may be fined or suspended or both in accordance with this Chapter. If the Trainer cannot be present on race days, s/he shall designate an Assistant Trainer. Such designation shall be made prior to time of entry unless otherwise approved by the Stewards. Failure to fully disclose the actual Trainer of a horse participating in an approved race shall be grounds to disqualify the horse and subject the actual Trainer to possible disciplinary action by the Stewards or the

Commission. Designation of an Assistant Trainer shall not relieve the Trainer's absolute responsibility for the conditions and eligibility of the horse but shall place the Assistant Trainer under absolute responsibility also. Willful failure on the part of the Trainer to be present at, or refusal to allow the taking of any specimen, or any act or threat to prevent or otherwise interfere therewith shall be cause for disqualification of the horse involved; and the matter shall be referred by the Official Veterinarian to the Stewards for further action.

(b) **Failure to detect a reported permitted medication.** A horse that is an official Salix user pursuant to this Chapter that does not show a detectable concentration of Furosemide (Salix) in the post race plasma or serum sample shall be in violation of this Section. The Trainers of the horse which fails to show a detectable level of Furosemide (Salix) shall be fined Five Hundred Dollars ($500.00). Veterinarians shall also be subject to a Five Hundred ($500.00) fine should the Stewards determine that there was negligence on his/her part.

325:45-1-12. ~~Bleeder List~~ Bleeder and Furosemide (Salix) user list

~~Furosemide (Salix) shall be administered for the control of bleeding to an entered horse on the Bleeder List. A horse may be placed on the Bleeder List under the following conditions:~~

The Official Veterinarian at each race meeting shall maintain on a current Bleeder and Furosemide (Salix) User List (hereinafter referred to as the "List") a list of horses classified as known bleeders or Salix users. The Official Veterinarian shall make the list available to racing officials at other racetracks operating in Oklahoma. Once a horse is a known bleeder, the Official Veterinarian shall record and initial on the foal certificate of the horse.

(1) Furosemide (Salix) User:

(A) A horse shall be placed on the List if administered Salix prior to a race. Furosemide (Salix) may be administered to a horse that is entered to compete in a race. It is recommended that the dosage not exceed two hundred fifty (250) milligrams or be less than one hundred (150) milligrams. The dosage is recommended to be administered not less than four (4) hours prior to post time.

(B) A horse whose most recent past performance line indicates the horse has been participating on Furosemide (Salix) may be allowed to continue to use Salix. No Bleeder Certificate shall be issued.

(2) Bleeder: A horse shall be a known bleeder and be placed on the List under the following conditions:

(~~1~~A) When such horse demonstrates visible external evidence of exercise-induced pulmonary hemorrhage or the existence of hemorrhage in the trachea post-exercise upon endoscopic examination, and such hemorrhage is sufficient to impair the ability of the horse to race safely. Such examination must be performed by an Oklahoma Horse Racing Commission-licensed veterinarian practicing within the enclosure, providing the bleeding occurred at a licensed Oklahoma Horse Racing Commission racetrack. The Racing or Official Veterinarian may be present during the examination.

(~~2~~B) A horse with a Bleeder Certificate from another jurisdiction which employs bleeder qualification criteria deemed satisfactory to the Commission, as specified in (1) of this Section, and such horse is approved to participate by the Official Veterinarian. Once a horse is placed on the Bleeder List, the Owner will receive a Bleeder Certificate signed by the practicing veterinarian and the Official Veterinarian. A horse shall be removed from the Salix List only by the Official Veterinarian, who shall provide written notification to the Stewards of the reason for removal.

~~(3) A horse whose most recent past performance line indicates the horse has been participating on Furosemide (Salix) may be allowed to continue to use Salix. No Bleeder Certificate shall be issued.~~

325:45-1-13. Racing after bleeding

(a) A horse that is a known bleeder shall not be eligible to race for a period of not less than ten (10) days after it is placed on the Bleeder and Furosemide (Salix) User List, except as otherwise determined by the Official Veterinarian, and has been approved by the Racing Veterinarian or Official Veterinarian.

(b) A horse that has a second occurrence of bleeding within 365 days of the first bleeding occurrence shall not be eligible to race for thirty (30) days from the date of such bleeding occurrence.

(c) A horse that has a third occurrence of bleeding within 365 days of the first bleeding occurrence shall not be eligible to race in this jurisdiction for ninety (90) days from the date of such bleeding occurrence.

(d) Should a horse experience more than three occurrences of bleeding in a 365 day period, it shall not be eligible to race in this jurisdiction for 365 days from the date of any subsequent bleeding occurrence.

325:45-1-15. Equine drug testing laboratory reports

A finding by a chemist at a Commission-approved equine drug testing laboratory that a test sample taken from a horse contains a drug or its metabolites or analogs, or any substance foreign to the natural horse ~~or Furosemide (Salix) or Phenylbutazone~~ in excess of the ~~Commission-approved tolerance level~~ Commission-Sanctioned Threshold shall be prima facie evidence that such has been administered to the horse either internally or externally in violation of these rules. It is presumed that the sample of urine, blood or other acceptable specimen tested by the approved laboratory to which it is sent is taken from the horse in question; its integrity is preserved; that all accompanying procedures of collection, preservation, transfer to the laboratory, and analyses of the sample are correct and accurate; and that the report received from the laboratory pertains to the sample taken from the horse in question and correctly reflects the condition of the horse during the race in which it was entered, with the burden on the Trainer, Assistant Trainer and/or other responsible person to prove otherwise at any hearing in regard to the matter conducted by the Stewards or the Commission.

325:45-1-17. ~~Equipment~~ Requirements for official testing

Organization~~s~~ Licensees shall provide the equipment, necessary supplies and services prescribed by the Commission and the Official Veterinarian for the taking of or administration of blood, urine, or other tests.

325:45-1-18. Taking of samples

Pursuant to the provisions of 3A:204(A)(14):

~~(1) Blood, urine, or other samples shall be taken under the direction of the Offiical Veterinarian or persons appointed or assigned by the Official Veterinarian for such purposes.~~

(1) Blood shall be taken only by the Official Veterinarian.

(2) Urine, other samples or specimens shall be taken under the direction of the Official Veterinarian or persons appointed or assigned by the Official Veterinarian for such purposes. All samples shall be taken in a detention area approved by the Commission, unless the Official Veterinarian approves otherwise. Each horse shall be cooled out for a minimum of thirty (30) minutes after the race before a urine sample is to be taken. The taking of any test samples shall be witnessed, confirmed or acknowledged by the Trainer of the horse being tested or his/her authorized representative or employee, and may be witnessed by the Owner, Trainer, or other licensed person designated by them. Such samples shall be sent to racing laboratories approved and designated by the Commission, in such manner as the Commission or its designee may direct. All required samples shall be in the custody of the Official Veterinarian, his/her assistants, or other persons approved by the Official Veterinarian from the time they are taken until they are delivered for shipment to the testing laboratory. Except for 1) the decanting of the sample by the Official Veterinarian or other person authorized by the Official Veterinarian to do so, 2) for the addition of preservatives or substances necessarily added by the Commission-approved laboratory for preservation of the sample, and 3) or in the process of analysis, no person shall break the seal of, remove, or otherwise attempt to alter any sample required to be collected by this Chapter.

(~~2~~3) The Commission has the authority to direct the approved laboratory to retain and preserve samples for future analysis.

(~~3~~4) The fact that purse money has been distributed shall not be deemed a finding that no chemical substance has been administered in violation of the provisions of this Chapter to the horse earning such purse money.

(~~4~~5) The decanting of a blood sample -- at the Trainer's/Owner's option -- may be witnessed by the Trainer/Owner of the horse being tested or by his/her authorized representative or employee or other licensed person designated by the Trainer/Owner. The Trainer/Owner exercises his/her option to witness the decanting of a blood sample by making himself/herself or authorized representative or employee or other licensed person designated by the Trainer/Owner present at the time of the decanting of the blood sample. If not present at the time of decanting, the Trainer/Owner or authorized representative or employee or other licensed person designated by the Trainer/Owner ~~shall have no~~ waives the right to witness the decanting process.

325:45-1-19. Laboratories approved and designated by the Commission

(a) Only laboratories approved by the Commission may be used in obtaining analysis reports on urine, blood, or other specimens, taken from the winners or other designated horses of each race meeting. The Commission and the Board of s~~S~~tewards shall receive reports directly from the laboratory. [3A:204(A)(14)]

(b) The Commission shall publish a list of approved Referee Laboratories which must be able to demonstrate competency for that drug or substance reported by the Primary Laboratory, at the limit of detection (LOD) applied by the Primary Laboratory, from which an Owner/Trainer shall select one.

325:45-1-20. Split samples

~~As determined by the Official Veterinarian, when sample quantity permits, each test sample shall be divided into two (2) portions so that one (1) portion shall be used for the initial testing for substances in the sample. If the Trainer or Owner so requests in writing to the Stewards within forty-eight (48) hours of notice of a positive lab report on the test sample of his/her horse, the second portion shall be sent for further testing to a drug testing laboratory approved and designated by the Commission. Nothing in this Section shall prevent the Commission or Executive Director from ordering first use of both sample portions for testing purposes. The results of said split sampling may not prevent the disqualification of the horse pursuant to the provisions of 325:45-1-15 and 325:45-1-4. All costs for the transportation and testing of the second sample portion shall be the financial responsibility of the requesting person, and payment shall be due from the requesting person within thirty (30) days of receipt of notice of the costs. The Official Veterinarian shall have overall responsibility for the freezing, storage, and safeguarding of the second sample portion.~~

As determined by the Official Veterinarian, when sample quantity permits, each test sample shall be divided into two (2) portions so that one (1) portion shall be used for the initial testing for substances in the sample. Urine and blood samples shall be collected unless otherwise provided by rule. Both the Trainer and Owner shall be notified in writing of positive lab report of the horse. If the duly notified Trainer and/or Owner so requests in writing to the Stewards within forty-eight (48) hours of notice of a positive lab report on the test sample of his/her horse, the ~~second portion~~ split sample shall be sent for further testing to a drug testing laboratory approved ~~and designated~~ by the Commission. Nothing in this Section shall prevent the Commission or Executive Director from ordering first use of both sample portions for testing purposes. The results of said split sampling may not prevent the disqualification of the horse pursuant to the provisions of 325:45-1-15

and 325:45-1-4. All costs for the transportation, shipment and testing of the ~~second~~ split sample ~~portion~~ shall be the financial responsibility of the requesting person, and payment shall be ~~due from~~ paid by the requesting person through the Horsemen's Bookkeeper or otherwise ~~within thirty (30) days of receipt of notice of the costs~~ at the time of packaging. The Official Veterinarian shall have overall responsibility for the freezing, storage, and safeguarding of the ~~second~~ **split** sample ~~portion~~. Failure of an Owner and/or Trainer to make a written request of the Stewards for split sample testing within 48 hours or failure to make payment as required by this rule constitutes a waiver of any and all rights to have the split sample tested. If the split sample is not confirmed as positive, the Owner or Trainer will be reimbursed the cost of testing by the Commission.

325:45-1-22. Phenylbutazone use

The use of Phenylbutazone shall be permitted under the following conditions:

(1) Any horse to which Phenylbutazone has been administered shall be subject to having a blood and/or urine sample(s) taken at the direction of the Official Veterinarian to determine the quantitative Phenylbutazone level(s) and/or the presence of other drugs which may be present in the blood or urine sample(s). The cost of such testing shall be at the expense of the horse Owner.

(2) The permitted quantitative test level of Phenylbutazone shall not exceed 5 micrograms (ug) per milliliter (ml) of plasma.

(3) The Stewards shall impose a fine of ~~Two Hundred Fifty~~ Five Hundred Dollars (~~$250.00~~ $500.00) for violation of paragraph (2) of this Section if the result of quantitative testing exceeds 5 micrograms (~~mcg~~ ug) per milliliter (ml) of plasma but not greater than 9 10 micrograms (~~mcg~~ ug) per milliliter (ml) of plasma. In the event any Trainer violates paragraph 2 of this Section not exceeding 10 micrograms per milliliter of plasma five (5) or more times within a one (1) year period, that Trainer shall be subject to a One Thousand Dollar ($1,000.00) fine. If the result~~s~~ of quantitative testing of the sample(s) exceed ~~9~~ 10 micrograms (~~mcg~~ ug) per milliliter (ml) of plasma, the Stewards shall impose a fine of ~~Two Hundred Fifty~~ One Thousand Dollars (~~$250.00~~ $1,000.00); and the Owner or Owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned. For a second-time offense for violation of ~~the~~ greater than ~~9~~ 10 micrograms (~~mcg~~ ug) per milliliter (ml) of plasma, the Stewards shall impose a fine of ~~Five Hundred~~ Two Thousand, Five Hundred Dollars (~~$500.00~~ $2,500.00); and the Owner or Owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned; and if the second-time offense is on the same horse within a one (1) year period, the Stewards shall impose a fine of ~~One Thousand~~ Two Thousand, Five Hundred Dollars (~~$1,000.00~~ $2,500.00) and ~~shall~~ may suspend the Trainer for up to thirty (30) days; and the Owner or Owners of such horse shall not participate in any portion of the purse or stakes; and any trophy or other award shall be returned. Penalties for third time and subsequent violations on the same horse shall be assessed by the Stewards to include fines not to exceed Two Thousand Five Hundred Dollars ($2,500.00) per person per violation, suspension of a license for up to one year, revocation of a license, ordering that a person be ineligible to hold a license, referral of the matter to the Commission with or without recommendation, or any combination of these assessments.

(4) If within one (1) year, any Licensee violates paragraph 3 of this Section by exceeding 10 ug/ml of plasma five (5) times or more, the Stewards shall refer that Licensee to the Commission for disciplinary action.

325:45-1-23. Trainer responsibility - Phenylbutazone

Should the chemical analysis of the urine, blood, ~~or~~ other sample or specimen taken from a horse under the Trainer's supervision show that the drug Phenylbutazone is present in an amount exceeding the Commission-approved tolerance levels, it shall be taken as prima facie evidence that the same was administered by or with the knowledge of the Trainer or person or persons under his/her supervision having care or custody of such horse. At the discretion of the Stewards or Commission, the Trainer and all other persons shown to have had care or custody of such horse may be fined or suspended or both in accordance with this Chapter. If the Trainer cannot be present on race days, s/he shall designate an Assistant Trainer. Such designation shall be made prior to time of entry unless otherwise approved by the Stewards. Failure to fully disclose the actual Trainer of a horse participating in an approved race shall be grounds to disqualify the horse and subject the actual Trainer to possible disciplinary action by the Stewards or the Commission. Designation of an Assistant Trainer shall not relieve the Trainer's absolute responsibility for the conditions and eligibility of the horse but shall place the Assistant Trainer under absolute responsibility also. Willful failure on the part of the Trainer to be present at, or refusal to allow the taking of any specimen, or any act or threat to prevent or otherwise interfere therewith shall be cause for disqualification of the horse involved; and the matter shall be referred by the Official Veterinarian to the Stewards for further action.

325:45-1-24. Drug classification and penalties

Upon a finding of a violation of any medication or prohibited substances rule in this Chapter, the Stewards shall consider the classification level of the violation as currently established by the UNIFORM CLASSIFICATION GUIDELINES OF FOREIGN SUBSTANCES as promulgated by the Association of Racing Commissioners International, Inc. and may impose penalties and disciplinary measures consistent with the recommendations contained therein, except not to conflict with the mandates of 325:45-1-9 and 325:45-1-22. Provided, however, that in the event a majority of the Stewards determine that mitigating circumstances require imposition of a lesser penalty, they may impose the lesser penalty. In the event a majority of the Stewards wish to impose a greater penalty or a penalty in excess of the authority granted them, then, and in such event,

they may impose the maximum penalty authorized and refer the matter to the Commission with specific recommendations for further action.

325:45-1-25. Use, administration and regulation of Furosemide (Salix) [REVOKED]

~~Not withstanding any rule already in place, all horses participating in a horse race may be administered Furosemide (Salix) prior to a horse race. The dosage shall not exceed two hundred fifty (250) milligrams or be less than one hundred fifty (150) milligrams. The dosage shall be administered not less than four (4) hours prior to post time.~~

325:45-1-26. Primary laboratory's request for additional test time

In the event that the Primary Laboratory's official chemist should find a specimen sample suspicious of a prohibited substance or medication, he/she may request in writing additional time not exceeding ten (10) business days for test analysis and/or confirmation. The Owner/Trainer shall be notified in writing in the event that additional time is granted.

325:45-1-27. Prohibited practices

In addition to other prohibitions set forth in this administrative regulation, the following shall be prohibited at a location under the jurisdiction of the Commission:

(1) The possession and use of a drug, medication or substance (a) which may endanger the health and welfare of the horse or (b) the use of which may endanger the safety of the rider.

(2) The possession or use of a drug, medication or substance that has not been approved by the United States Food and Drug Administration (FDA) for use in humans or animals.

(3) The possession or use of the following agents at a location under the jurisdiction of the Commission:

(A) Erythropoietin;

(B) Darbepoietin;

(C) Oxyglobin;

(D) Hemopure; or

(E) Any substance that abnormally enhances the oxygenation of body tissue.

(4) The practice, administration or application of a treatment, procedure or therapy which may (a) endanger the health or welfare of a horse or (b) endanger the safety of a rider.

(5) The use of Extracorporeal Shock Wave Therapy or Radial Pulse Wave Therapy machines shall not be permitted unless the following conditions are met:

(A) Any treated horse shall not be permitted to race for a minimum of ten (10) days following treatment.

(B) The use of Extracorporeal Shock Wave Therapy machines shall be limited to Commission-Licensed veterinarians only.

(C) Extracorporeal Shock Wave Therapy machines which are within the enclosure shall be registered with and approved by the Commission.

(D) Any treatments administered shall be reported to the Official Veterinarian by the Trainer and/or veterinarian no later than twenty-four (24) hours post administration.

(6) The administration within 24 hours of a race of an alkalizing substance that could alter the serum or plasma pH or concentration of bicarbonates or total dissolved carbon dioxide in a horse.

(7) Possession or use of a blood gas machine by other than an authorized representative of the Commission at a location under the jurisdiction of the Commission.

325:45-1-28. Report of treatment: Procaine penicillin administration

The efficacious nature of Procaine Penicillin shall permit its use as a therapeutic medication. A licensed veterinarian shall submit, prior to post time of the first race on the day of the race, a report to the Official Veterinarian that the horse participating on that day's race card has been previously treated with a Procaine Penicillin administration. The report must contain the Procaine Penicillin administration, treatment dates, dosage, name and tattoo number of the horse, Trainer's name and race date. The presence of Procaine Penicillin in the post race sample of a participating horse is permitted under the following conditions:

(1) Report of treatment is properly filed with the Official Veterinarian.

(2) The treated horse is presented, prior to the first race, to the Official Veterinarian in order to draw an adequate blood sample for testing.

(3) The pre-race blood/serum sample shall be tested and compared to the post-race blood/serum sample. The pre-race sample shall not exceed the Commission-sanctioned levels for thresholds. Should the pre-race sample levels be reported by the official testing laboratory as equal to or greater than the post-race levels, there shall be no positive affidavit filed by the laboratory.

(4) Should the post-race sample levels exceed the pre-race levels by an amount not sanctioned by the Commission, the sample shall be treated as being in violation of the rules of this Chapter. A positive affidavit will be issued by the laboratory. The Stewards may use mitigating factors in their decision to impose disciplinary action against the Trainer, horse or other parties found to have been in violation of this Chapter. The cost of pre-race testing shall be the responsibility of the Owner of the treated horse.

325:45-1-29. Environmental contaminants and substances of human use

(a) The Commission recognizes that environmental contaminants are endogenous to the horse or they can arise from plants traditionally grazed or harvested as equine feed or are present in equine feed because of contamination during the cultivation processing treatment, storage or transportation phases.

(b) The following drugs are recognized as substances of human use and addiction and which could be found in the horse

due to its close association with humans; included but are not limited to:

(1) caffeine
(2) cocaine
(3) morphine
(4) lidocaine
(5) strychnine
(6) atropine

(c) Any sample found to be over the Commission-Sanctioned Thresholds shall be treated as a positive; however, if substantial evidence presented in a Hearing pursuant to Rule 325:45-1-26 shows that a positive test is the result of environmental contamination or inadvertent exposure due to human drug use, it should be considered as a mitigating factor in any disciplinary action taken against the affected Trainer.

[OAR Docket #06-1148; filed 5-26-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 70. OBJECTIONS AND PROTESTS; HEARINGS AND APPEALS

[OAR Docket #06-1149]

RULEMAKING ACTION:
PERMANENT final adoption
RULE:
325:70-1-22. Grounds for Appeal from Decision of the Stewards [AMENDED]
AUTHORITY:
75 Oklahoma Statutes §§302, 305, and 307; Title 3A O.S., §204(A); Oklahoma Horse Racing Commission
DATES:
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Failure of the Legislature to disapprove the rule resulted in approval on May 23, 2006
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Effective:
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SUPERSEDED EMERGENCY ACTIONS:
Not Applicable
INCORPORATED BY REFERENCE:
Not Applicable
ANALYSIS:
Since the Oklahoma State Supreme Court has held that the use of "preponderance of the evidence" is an inappropriate standard of proof, Commission Staff reviewed the OHRC *Rules of Racing* for the applicability of the term 'evidence.' Consequently, Commission Counsel recommended that an amendment be made to Rule 325:70-1-22.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

325:70-1-22. Grounds for appeal from decision of the stewards

Any decision of the Stewards, except decisions regarding disqualifications for interference during the running of the race and summary suspensions, may be appealed to the Commission, as specified in 325:70-1-23 and 325:70-1-24. Such decisions may be overruled, referred back to the Stewards, or subject to other action which the Commission deems appropriate if it is found that:

(1) The Stewards mistakenly interpreted the law; or
(2) New evidence is produced which, through the exercise of reasonable diligence, could not have been found at the time of the Stewards' hearing and is of a convincing nature which, if found to be true, would require the overruling of the decision or remanding the matter to the Board of Stewards; or
(3) The Stewards' decision is not supported by ~~substantial evidence~~ the applicable standard of proof; or
(4) The best interests of racing and the State may be better served. [3A:204 and 75:250.4]

[OAR Docket #06-1149; filed 5-26-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 80. GAMING LICENSING REQUIREMENTS

[OAR Docket #06-1150]

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RULES:
Subchapter 1. General Provisions [NEW]
325:80-1-1. [NEW]
325:80-1-2. [NEW]
325:80-1-3. [NEW]
Subchapter 3. Gaming License Classifications [NEW]
325:80-3-1. [NEW]
Subchapter 5. Gaming Licenses and Applications [NEW]
325:80-5-1. [NEW]
325:80-5-2. [NEW]
325:80-5-3. [NEW]
325:80-5-4. [NEW]
325:80-5-5. [NEW]
325:80-5-6. [NEW]
Subchapter 7. Requirements for Racetrack Gaming Operator License and Recipient Racetrack Gaming License [NEW]
325:80-7-1. [NEW]
325:80-7-2. [NEW]
325:80-7-3. [NEW]

325:80-7-4. [NEW]
325:80-7-5. [NEW]
Subchapter 9. Requirements for Manufacturer, Distributor, or Manufacturer/Distributor, and Their Employee License Applicants [NEW]
325:80-9-1. [NEW]
325:80-9-2. [NEW]
Subchapter 11. Requirements for Vendor License [NEW]
325:80-11-1. [NEW]
325:80-11-2. [NEW]
325:80-11-3. [NEW]
325:80-11-4. [NEW]
Subchapter 13. Requirements for Key Executive License or Gaming Employee License and Amendments to Any Employee License [NEW]
325:80-13-1. [NEW]
325:80-13-2. [NEW]
325:80-13-3. [NEW]
325:80-13-4. [NEW]
325:80-13-5. [NEW]
325:80-13-6. [NEW]
325:80-13-7. [NEW]
325:80-13-8. [NEW]
Subchapter 15. Requirements for Independent Testing Laboratory Licenses [NEW]
325:80-15-1. [NEW]
Subchapter 17. Fees and Assessments [NEW]
325:80-17-1. [NEW]
Subchapter 19. Consideration of License Application and Licensee Disciplinary Actions [NEW]
325:80-19-1. [NEW]
325:80-19-2. [NEW]
325:80-19-3. [NEW]
325:80-19-4. [NEW]
325:80-19-5. [NEW]

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75 Oklahoma Statutes §§302, 305, and 307; Title 3A O.S., §204(A); Oklahoma Horse Racing Commission

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Subchapter 1. General Provisions [NEW]
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325:80-1-3. [NEW]
Subchapter 3. Gaming License Classifications [NEW]
325:80-3-1. [NEW]
Subchapter 5. Gaming Licenses and Applications [NEW]
325:80-5-1. [NEW]
325:80-5-2. [NEW]
325:80-5-3. [NEW]
325:80-5-4. [NEW]
325:80-5-5. [NEW]
325:80-5-6. [NEW]
Subchapter 7. Requirements for Racetrack Gaming Operator License and Recipient Racetrack Gaming License [NEW]
325:80-7-1. [NEW]
325:80-7-2. [NEW]
325:80-7-3. [NEW]
325:80-7-4. [NEW]
325:80-7-5. [NEW]
Subchapter 9. Requirements for Manufacturer, Distributor, or Manufacturer/Distributor, and Their Employee License Applicants [NEW]
325:80-9-1. [NEW]
325:80-9-2. [NEW]
Subchapter 11. Requirements for Vendor License [NEW]
325:80-11-1. [NEW]
325:80-11-2. [NEW]
325:80-11-3. [NEW]
325:80-11-4. [NEW]
Subchapter 13. Requirements for Key Executive License or Gaming Employee License and Amendments to Any Employee License [NEW]
325:80-13-1. [NEW]
325:80-13-2. [NEW]
325:80-13-3. [NEW]
325:80-13-4. [NEW]
325:80-13-5. [NEW]
325:80-13-6. [NEW]
325:80-13-7. [NEW]
325:80-13-8. [NEW]
Subchapter 15. Requirements for Independent Testing Laboratory Licenses [NEW]
325:80-15-1. [NEW]
Subchapter 17. Fees and Assessments [NEW]
325:80-17-1. [NEW]
Subchapter 19. Consideration of License Application and Licensee Disciplinary Actions [NEW]
325:80-19-1. [NEW]
325:80-19-2. [NEW]
325:80-19-3. [NEW]
325:80-19-4. [NEW]
325:80-19-5. [NEW]

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In this issue
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INCORPORATED BY REFERENCE:
Not Applicable

ANALYSIS:
After SQ 712 was approved in the November, 2004 General Election, the Oklahoma Horse Racing Commission developed the original *Rules for Racetrack Gaming*. Those rules were adopted under emergency rulemaking procedures on March 17, 2005, and Governor Henry approved them April 6, 2005. In the time since approval of the original rules, some of the stakeholders - the racetracks and the horsemen's representative organizations - have contended that these original rules placed the racetracks and horsemen at a competitive disadvantage to Tribal casinos for the following reasons: a) the rules did not completely follow the language in the Act; b) further, the rules did not adequately address all of the authorized games; c) the rules introduced a stricter regulation that restricted the operation of the games, resulting in seemingly unnecessary regulation and language not found in the Act; and d) the original rules also set criteria and specifications regarding the functioning of the games that unfortunately did not allow for technological advances in the evolution of the authorized games.

The Ad Hoc Committee on Gaming Rules was appointed by Chairman Calvert at the December 15, 2005 Commission meeting to address the concerns. Membership on the Ad Hoc Committee included some of the key stakeholders. The Committee, chaired by Chairman Randy Calvert, consisted of three (3) Commissioners of the Oklahoma Horse Racing Commission [Commissioners Randy Calvert, Roger Cole and Patrick Grimmett], the Executive Director of the Horse Racing Commission [Constantin A. Rieger], the Commission Counsel [Neal Leader], one (1) representative of the Oklahoma Quarter Horse Racing Association [Debbie Schauf], one (1) representative of the Thoroughbred Racing Association of Oklahoma [Joe Lucas], racetrack representatives [Scott Daruty for Remington Park, Bob Rabon for Blue Ribbon Downs and Mark Enterline for Will Rogers Downs],

Oklahoma Thoroughbred Association [R.D. Logan] and John Smicklas [Thoroughbred Owner]. Through a number of long meetings from December, 2005 through March, 2006, rule amendments were drafted. At the March 23, 2006 Rescheduled Regular Meeting, the Commission considered the rule amendments and adopted them under both emergency and permanent rulemaking procedures.

CONTACT PERSON:

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

325:80-1-1. Purpose

The Rules in this chapter establish Standards and requirements for licensure, certification, registration, renewal and other approval under the State-Tribal Gaming Act.

325:80-1-2. Definitions

Unless otherwise defined below, terms used in this chapter have the same meanings as set forth in the State-Tribal Gaming Act:

"Act" means the State-Tribal Gaming Act enacted by the people with passage of State Question 712.

"Authorized games" means Electronic Amusement Games as defined in the Act, Electronic Bonanza-Style Bingo Games as defined in the Act, Electronic Instant Bingo Games as defined in the Act, Compact Electronic Games as defined in these Rules, and Non-Compact Electronic Games as defined by these Rules.

"Commission" means the Oklahoma Horse Racing Commission.

"Component" means a part of a Gaming Machine that is necessary for the proper operation and essential function of the Gaming Machine, including but not limited to a hopper, coin acceptor, Microprocessor and related circuitry, Program Storage Device, Bill Acceptor, cashless system, progressive system, monitoring system, meter and any other parts the Commission determines are Components; a Component is necessary for the proper operation and essential function of a Gaming Machine if it affects, directly or indirectly, the Gaming Machine's operation, game outcome, security, record-keeping, or communication with the central monitoring system; parts such as light bulbs, buttons, wires, decorative glass, fuses, batteries, handles, springs, brackets, and locks are not Components if they do not directly or indirectly affect the Gaming Machine's operation, game outcome, security, record-keeping, or communication with the central monitoring system.

"Control," when used as a noun, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or to exercise significant influence over management and policies due to financial investment, assumption of debts or expenses, or other monetary or non-monetary considerations extended to the applicant or Licensee; when used as a verb, "Control" means to exert, directly or indirectly, such power, or to be in a position to exert such power.

"Distributor" means a non-Manufacturer who leases, sells, distributes or markets any Gaming Machine, associated equipment, game program or Program Storage Device to a Racetrack Gaming Operator Licensee in the State of Oklahoma.

"Enclosure" means all areas of the property of an Organization Licensee to which admission can be obtained only by payment of an admission fee or upon presentation of proper credentials and all parking areas designed to serve the facility which are owned or leased by the Organization Licensee.

"Executive director" means the executive director of the Commission.

"Gaming agent" means a Commission employee trained in machine gaming, responsible for on-site enforcement of the Act and these Rules and other regulatory responsibilities as assigned by the Executive Director.

"Gaming employee" means any employee of a Racetrack Gaming Operator Licensee who works in any capacity within the confines of the Gaming Facility.

"Gaming employee license" means a license issued to a Gaming Employee by the Commission.

"Gaming facility" means that area within an Organization Licensee's Racetrack Premises approved by the Commission that has been set aside for the use of Authorized Games and related activities and access to which is limited to patrons 18 years of age or older.

"Gaming machine" means a contrivance designed primarily for gambling purposes which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, or any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

"Gaming machine license" means a license issued by the Commission to a Racetrack Gaming Operator Licensee for each Gaming Machine brought into the Racetrack Premises, for any purpose, including but not limited to storage, repair, modification or play.

"Independent testing laboratory" means a laboratory with a national reputation for honesty, independence, competence and timeliness that is demonstrably competent and qualified to scientifically test and evaluate devices for compliance with the Act and to otherwise perform the functions assigned to it in the Act. An Independent Testing Laboratory shall not be owned or Controlled by an Organization Licensee, an Indian tribe, the State, or any Manufacturer, supplier or operator of Gaming Machine. The use of an Independent Testing Laboratory for any purpose related to the operation of Authorized Games by an Organization Licensee under the Act shall be made from a list of one or more laboratories approved by the Commission.

"Key executive" means an executive of a Racetrack Gaming Operator Licensee, Manufacturer, Distributor, Manufacturer/Distributor, Vendor, or Independent Testing Laboratory who supplies goods and/or services which are used in the actual gaming, gaming monitoring or gaming surveillance, including officers, directors, and other Persons having the power to exercise significant influence over decisions concerning any part of the licensed gaming operations of the licensed employer, which for a Racetrack Gaming Operator Licensee, would include but would not be limited to the General Manager, Comptroller, Director of Finance, Director of Security, Director of Electronic Gaming Operations, and Director of Marketing.

"Key executive license" means a license issued to a Key Executive by the Commission.

"Manufacturer" means a Person who manufactures, fabricates, assembles, produces, programs, refurbishes, or makes Modification to any Gaming Machine or Component thereof, or associated Program Storage Device for sale, lease, distribution, use or play by a Racetrack Gaming Operator Licensee in the State of Oklahoma.

"Manufacturer licensee" means a Manufacturer licensed by the Commission.

"Manufacturer/Distributor" means a Person who is both a Manufacturer and Distributor as defined in these Rules.

"Manufacturer/Distributor licensee" means a Manufacturer/Distributor Licensed by the Commission.

"Modification" means a change or alteration in an approved Gaming Machine or Component thereof that affects the manner or mode of play (including the percentage paid by the Gaming Machine), as well as a change in Control or graphics programs "Modification" does not include a conversion from one approved mode of play to another approved mode of play, replacement of one game for another approved game replacement of one Component with another pre-approved Component, or the rebuilding of a previously approved Gaming Machine with pre-approved Components.

"Occupation gaming license" means any gaming license issued by the Commission other than a Racetrack Gaming Operator License or a Recipient Racetrack Gaming License.

"Occupation gaming licensee" means any Person receiving an Occupation Gaming License issued by the Commission.

"Organization license" means a license issued by the Commission which authorizes the licensee to conduct a race meeting in Oklahoma and accept pari-mutuel wagers on the outcome of live and simulcast horse racing.

"Organization licensee" means any Person receiving an Organization License issued by the Commission.

"Participating tribe" means an Indian tribe which operates a Gaming Facility within a radius of twenty (20) miles from the Enclosure of a Recipient Racetrack Gaming Licensee pursuant to a Model Compact.

"Person" means any individual, partnership, corporation, or other association or entity.

"Program storage device" means an EPROM (Erasable Programmable Read-Only Memory), hard drive, DVD, CD-ROM or other storage medium which is used for storing program instructions in a Gaming Machine, system or other associated equipment.

"Racetrack gaming operator license" means a license issued by the Commission which authorizes an Organization Licensee to conduct Authorized Games under the regulation, implementation and enforcement of the Commission.

"Racetrack gaming operator licensee" means any Organization Licensee which has been issued a Racetrack Gaming Operator License by the Commission.

"Racetrack premises" means the property that is owned or leased by the Organization Licensee that is used for racetrack purposes.

"Recipient racetrack gaming license" means a license issued by the Commission which authorizes the licensee to receive the funds authorized in the Act from Participating Tribes.

"Recipient racetrack gaming licensee" means any Person receiving a Recipient Racetrack Gaming License issued by the Commission.

"Rules" means the Commission's *Rules for Racetrack Gaming*.

"State" means the State of Oklahoma.

"This Title" means Title 325 of the Oklahoma Administrative Code.

"Vendor" means a Person, other than a licensed Manufacturer, Distributor, or Manufacturer/Distributor, who in selling or leasing goods and/or services to a Racetrack Gaming Operator Licensee, conducts operations on-site at a racetrack Gaming Facility provided that attorneys shall be exempt from the licensing requirement herein to be extent that they are providing services covered by their professional licenses.

"Vendor employee" means a Person employed by a Vendor and licensed by the Commission as a Vendor Employee.

"Vendor employee license" means a license which authorizes any employee to work for a licensed Vendor and supply goods and/or services on-site at the Gaming Facility.

"Vendor license" means a license issued by the Commission which authorizes a Vendor to sell goods and/or services to a Racetrack Gaming Operator Licensee.

325:80-1-3. Applicability of Rules - Exceptions

Rules pertaining to licenses and rulings against Licensees shall apply in like force to the spouse and members of the immediate family or household of the licensee if the continuation of participation in gaming by the affected Person circumvents the intent of the rule or affects the ruling by permitting a Person under the Control or direction of the Licensee to serve in essence as a substitute for a suspended Licensee, or a Person ineligible to participate in a particular activity.

SUBCHAPTER 3. GAMING LICENSE CLASSIFICATIONS

325:80-3-1. Types of Gaming Licenses

(a) Organization License, which authorizes the Licensee to conduct a race meeting in Oklahoma and accept pari-mutuel wagers on the outcome of live and simulcast horse racing.

(b) Racetrack Gaming Operator License, which authorizes an Organization Licensee to conduct Authorized Games as defined by the Act under the regulation, implementation and enforcement of the Commission. The License authorizes the approved Licensee to acquire, own, lease, possess, and operate Gaming Machine on its licensed premises.
(c) Recipient Racetrack Gaming License, which authorizes the approved Licensee to receive the funds authorized in the Act from Participating Tribes.
(d) Occupation Gaming License, which means any gaming license issued by the Commission other than a Racetrack Gaming Operator License or a Recipient Racetrack Gaming License.
(e) Manufacturer License, which authorizes the approved Licensee to manufacture, fabricate, assemble, produce, program, refurbish, or make Modifications to any Gaming Machine, or associated equipment in accordance with the Act and Commission Rules;
(f) Distributor License, which authorizes the approved non-Manufacturer to lease, sell, distribute or market any Gaming Machine, associated equipment, game program or Program Storage Device in Oklahoma or outside the State in accordance with the Act and Commission Rules; and
(g) Manufacturer/Distributor License, which authorizes the approved licensee to manufacture, fabricate, assemble, produce, refurbish, lease, sell, distribute, market or make Modifications to any Gaming Machine, associated equipment, game program or Program Storage Device in Oklahoma or outside the State in accordance with the Act and Commission Rules;
(h) Vendor License, which authorizes a Vendor, not licensed as a Manufacturer, Distributor, or Manufacturer/Distributor, that conducts operations on-site at a racetrack Gaming Facility to sell or lease goods and/or services to Racetrack Gaming Operator Licensees.
(i) Manufacturer's Employee License, which authorizes the approved Licensee to be an employee of a Manufacturer who supplies gaming-related goods and/or services to the Racetrack Gaming Operator Licensee on-site at the Gaming Facility.
(j) Distributor's Employee License, which authorizes the approved Licensee to be an employee of a Distributor who supplies gaming-related goods and/or services to the Racetrack Gaming Operator Licensee on-site at the Gaming Facility.
(k) Manufacturer/Distributor's Employee License, which authorizes the approved Licensee to be an employee of a Manufacturer/Distributor who supplies gaming-related goods and/or services to the Racetrack Gaming Operator Licensee on-site at the Gaming Facility.
(l) Key Executive License, which authorizes the recipient to be employed as a Key Executive.
(m) Vendor Employee License, which authorizes any employee to work for a licensed Vendor and supply goods and/or services on-site at the Gaming Facility.
(n) Gaming Employee License, which authorizes the recipient to be employed as a Gaming Employee.
(o) Gaming Machine License, which authorizes the Racetrack Gaming Operator Licensee to use or have a Gaming Machine on the Racetrack Premises.
(p) None of these gaming licenses may be transferred, sold, or assigned.

SUBCHAPTER 5. GAMING LICENSES AND APPLICATIONS

325:80-5-1. General provisions

(a) Any license, certification, registration, renewal or other approval issued by the Commission is deemed a revocable privilege. Except as otherwise provided in these Rules, all gaming licenses of whatever type are issued for a calendar year and no matter when issued during a calendar year, the license will expire at midnight, December 31, of the calendar year.
(b) Any application submitted under the provisions of the Act or these Rules constitute the seeking of a privilege, and the burden of proving qualification is on the applicant.
(c) Any application for license, certification, registration, renewal or other approval from the Commission will constitute a request to the Commission for a decision on the applicant's general suitability, character, integrity, and ability to engage in, or be associated with, gaming activity in Oklahoma. By filing an application with the Commission, the applicant specifically consents to investigation to the extent deemed appropriate by the Commission. Without limiting the foregoing, the investigation may include a background investigation and a credit check of the applicant and, in the case of Manufacturers, Distributors, Manufacturers/Distributors and Vendors who supply goods and/or services which are used in the actual gaming, gaming monitoring and gaming surveillance, and/or, in the case of Gaming Machine Manufacturers, Distributors and Manufacturers/Distributors, all Persons or entities having a 10% or more interest in the applicant.
(d) By applying for and obtaining any license, certification, registration, renewal or other approval from the Commission, the holder agrees to abide by all provisions of the Act and these Rules.
(e) By applying for a license, certification, registration, renewal or other approval from the Commission, the applicant accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss that may result from any disclosure or publication of any material or information contained in or relating to any application to the Commission. The mere fact that a Person or entity labels information submitted to the Commission or its staff as confidential does not make the information provided confidential. Confidentiality privileges are created by law and not by a Person or an entity submitting information to the State or its agents.

325:80-5-2. Time for filing an application for Racetrack Gaming Operator License

An application for a Racetrack Gaming Operator License must be filed no later than June 1 of each year for gaming conducted in the subsequent calendar year. Applications to operate Authorized Games in Calendar Year 2005 may be filed any time prior to June 1, 2005. At the request of any applicant,

the Commission may extend the deadline for Calendar Year 2005.

325:80-5-3. Application amendment and withdrawal

(a) If there is any change in the information submitted to the Commission in the application, the applicant must file, within ten (10) business days of becoming aware of the change, a written amendment disclosing all facts necessary to adequately inform the Commission of the change in circumstances before the Commission takes the requested action.

(b) An applicant may amend the application at any time prior to final action by the Commission.

(c) An amendment to an application filed by the applicant after the date on which the Commission has taken the action sought under the application, if the amendment is approved by the Commission, will become effective on the date determined by the Commission.

(d) An applicant may file a written request for withdrawal of the application at any time prior to final action on the application by the Commission.

325:80-5-4. Payment of non-refundable fees and costs required

The Commission may refuse to take final action on any application if all license regulation, investigation and fingerprint fees have not been paid in full. The Commission may deny the application if the applicant refuses or fails to pay all such fees. Additionally, an applicant who has refused or failed to pay the required costs will not be eligible to file any other application with the Commission until all such fees are paid in full. Neither the license fee or regulation fees nor any other fee is refundable.

325:80-5-5. Conditions of a Racetrack Gaming Operator License

In addition to conditions imposed in any conditional license issued by the Commission, the original and/or renewal licenses issued by the Commission are subject to the following conditions:

(1) With respect to a Racetrack Gaming Operator Licensee, the Licensee will at all times make its Gaming Facility and Racetrack Premises available for inspection by the Commission or the Oklahoma State Auditor and Inspector or their authorized representatives, with or without prior announcement. Additionally, the Licensee understands that a Gaming Agent is authorized to be present anywhere within the Gaming Facility each day any time during operation of the Gaming Facility, and whenever else deemed appropriate by the Commission Director of Law Enforcement.

(2) The Licensee consents to the examination of all accounts, bank accounts, and records of, or under the Control of the Licensee, or any entity in which the Licensee has a direct or indirect Controlling interest. Upon request of the Commission or its authorized representative, the Licensee must authorize all third parties in possession or Control of the requested documents to allow the Commission or the Oklahoma State Auditor and Inspector or their representatives to examine such documents.

(3) The Licensee accepts all risks of adverse public notice, embarrassment, criticism, damages, or financial loss that may result from any disclosure or publication of material or information supplied to the agency in connection with any application to the Commission.

(4) The Licensee will be responsible for all applicable registration, taxation, and licensing imposed by the Act or other State law upon the license, Gaming Machine, or associated equipment.

325:80-5-6. General grounds for refusal to issue license or denial of Gaming License applications

The Commission may refuse to issue a license or deny any license application on any grounds deemed reasonable by the Commission. Without limiting the foregoing, the Commission may deny the application on any of the following grounds:

(1) evidence of an untrue or misleading statement of material fact, or willful omission of any material fact, in any application, statement, or notice filed with the Commission, made in connection with any investigation, including the background investigation, or otherwise made to the Commission or its staff;

(2) conviction of any felony in any jurisdiction;

(3) conviction of any gambling offense in any jurisdiction;

(4) entry of any civil or administrative judgment against the applicant that is based, in whole or in part, on conduct that allegedly constituted a felony crime in the State or other jurisdiction the conduct occurred, or involved a gambling violation(s);

(5) association with Persons or businesses of known criminal background or Persons of disreputable character that may adversely affect the general credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

(6) any aspect of the applicant's past conduct, character, or behavior that the Commission determines would adversely affect the credibility, security, integrity, honesty, fairness or reputation of the proposed activity;

(7) failure of the applicant or its employees to demonstrate adequate business ability and experience to establish, operate, and maintain the business for the type of activity for which application is made;

(8) failure to demonstrate adequate financing for the operation proposed in the application;

(9) failure to satisfy any requirement for application or to timely respond to any request by the Commission for additional information;

(10) permanent suspension, revocation, denial or other limiting action on any gaming license issued by any jurisdiction;

(11) approval of the application would otherwise be contrary to Oklahoma law or public policy; or

(12) with respect to a Racetrack Gaming Operator Licensee's or Recipient Racetrack Gaming Licensee's failure

to conduct the number of live races required by the Act (unless written consent to such failure has been received from the official horsemen's representative organization(s) for the breed or breeds to which such failure relates).

SUBCHAPTER 7. REQUIREMENTS FOR RACETRACK GAMING OPERATOR LICENSE AND RECIPIENT RACETRACK GAMING LICENSE

325:80-7-1. Prerequisite for eligibility for initial license and renewals

(a) To qualify to hold and operate a Racetrack Gaming Operator License or Recipient Racetrack Gaming License, a racetrack must be licensed by the Oklahoma Horse Racing Commission pursuant to provisions of Title 3A of the Oklahoma Statutes to conduct live horse races or simulcast races and must meet the requirements pursuant to Title 3A and provisions of the Act and these Rules.

(b) After initial issuance of a Racetrack Gaming Operator's License, the license shall be renewed each year upon the following conditions:

(1) the payment of the annual Racetrack Gaming Operator Licensee application license fee, the annual Racetrack Gaming Operator Licensee regulation fee and the annual Racetrack Gaming Operator Licensee's Gaming Machine license fees;

(2) the applicant has conducted the required number of live races to be eligible to operate Authorized Games and furnishing the Commission with any supplementary information required by the Commission or its staff; and

(3) the issuance of an Organization License to that applicant for the applicable calendar year.

325:80-7-2. General form and requirements for Racetrack Gaming Operator License application

(a) Every application and statement required to be filed under the Act or these Rules must be submitted on forms supplied or approved by the Executive Director and must contain such information and documents as required.

(b) The applicant must file with the application all required supplemental forms.

(c) Upon request of the Commission, the applicant must further supplement any information provided in the application. The applicant must provide all requested documents, records, supporting data, and other information within the time period specified in the request. If the applicant fails to provide the requested information within the required time period as set forth in the request or these Rules, the Commission may deny the application unless good cause is shown.

(d) All information required to be included in an application must be true and complete as of the date of Commission action sought by the applicant. If there is any change in the information contained in the application, the applicant must file a written amendment in accordance with these Rules.

(e) The application and any amendments must be sworn to or affirmed by the applicant before a notary public. If any document is signed by an attorney for the applicant, the signature must certify that the attorney has read the document and that, to the best of the attorney's knowledge, information and belief, based on diligent inquiry, the contents of the documents supplied are true.

(f) The applicant must cooperate fully with the Commission and any agent of the Commission with respect to the background investigation of the applicant, including, upon request, making available any and all of its books and records for inspection. The Commission will examine the background, personal history, financial associations, character, record and reputation of the applicant to the extent the Commission determines.

(g) The Commission will automatically deny the application of any applicant that refuses to submit to a background investigation as required pursuant to the Act and these Rules.

(h) Neither the State, the Commission, any agency with which the Commission contracts to conduct background investigations, nor the employees of any of the foregoing, may be held liable for any inaccurate information obtained through such an investigation.

325:80-7-3. Operations Plan requirement

(a) The applicant for a Racetrack Gaming Operator License must submit with the application a proposed operations plan for the conduct of gaming. The plan must include the following:

(1) a drawing or drawings to scale of the building(s) in which the applicant proposes to conduct gaming, with the area(s) designated as the proposed Gaming Facility clearly outlined;

(2) a general description of the type and number of Gaming Machines proposed for operation;

(3) generic description of the games to be played on the machines and the proposed placement of the machines in the Gaming Facility;

(4) proposed administrative, accounting, and internal control procedures, including monetary control operations;

(5) proposed security plan;

(6) proposed staffing plan for gaming operations, including identification of Key Executives and employees;

(7) license applications for Key Executives;

(8) method to be used for prize payouts;

(9) details of any proposed progressive systems; and

(10) any other information requested by the Commission.

(b) The operations plan must provide for an escrow account or accounts to be established and maintained in accordance with Commission requirements for the purpose of holding in reserve large or progressive prizes to be won by participants and generated by the Gaming Facility. In the alternative, the Operator could secure the payment of such prizes through other funding mechanisms such as an irrevocable surety bond, irrevocable trust with an independent financial institution, other

trust mechanism, or letters of credit. The use of such alternative methods of prize payment must in every instance be preapproved by the Commission. Any purse monies generated by the Gaming Facility must be maintained in a separate escrow account.

(c) An applicant for a Racetrack Gaming Operator License is responsible for ensuring that Key Executive applications are filed in accordance with the Act and these Rules. The Commission may delay approval of or deny an application for a Racetrack Gaming Operator License on the grounds that a Key Executive application has not been submitted as required.

(d) A Racetrack Gaming Operator License will not be granted unless the Commission first determines that the operations plan submitted is suitable for the type of operation proposed and otherwise complies with the requirements of the Act and these Rules.

325:80-7-4. Security Plan requirement

(a) Racetrack Gaming Operator Licensees must implement and maintain security measures that will ensure safe and honest operation of the gaming establishment.

(b) Security personnel must be licensed by the Commission and must display a valid Commission license badge at all times while on duty. All armed security personnel must be Council on Law Enforcement Education and Training (CLEET) certified.

(c) At the same time that the applicant submits an application for a Racetrack Gaming Operator License, the applicant must submit a security plan for approval by the Commission Director of Law Enforcement. The security plan shall provide for a sufficient number of security personnel who must be on duty and in appropriate areas to ensure that gaming activities are conducted safely, honestly, and in compliance with the law. The Operator's security plan must specify how many security officers will be present during operating hours and how many will be armed. If the Commission's Director of Law Enforcement determines that the security measures at a Gaming Facility are inadequate, the Director shall notify the Operator, who may either correct the deficiency within forty-eight (48) hours or a longer period of time established by the Law Enforcement Director, or request a hearing on the issue before the Executive Director who shall resolve the issue. The Executive Director's decision may be appealed to the Commission. The security plan submitted to the Commission shall include a surveillance system which meets the minimum requirements established in these Rules.

325:80-7-5. Requirements for a Recipient Racetrack Gaming License

Applicants for a Recipient Racetrack Gaming License must submit an application to the Commission on a form approved or provided by the Executive Director which demonstrates: 1) the applicant has been granted an Organization License by the Commission, 2) the applicant is eligible, under the Act, to be a Recipient Racetrack Gaming Licensee, and 3) there is a Participating Tribe(s) within a radius of twenty (20) miles of the applicant's racing Enclosure that is operating Authorized Games under a Model Compact. The applicant must submit the required license fee with the application.

SUBCHAPTER 9. REQUIREMENTS FOR MANUFACTURER, DISTRIBUTOR, OR MANUFACTURER/DISTRIBUTOR, AND THEIR EMPLOYEE LICENSE APPLICANTS

325:80-9-1. Application for Manufacturer, Distributor, or Manufacturer/ Distributor License

(a) A Person may act as a Manufacturer, Distributor, or Manufacturer/Distributor of Gaming Machines, or Gaming Machine Components, to Racetrack Gaming Operator Licensees only if that Person has received from the Commission a license specifically authorizing that Person to act as a Manufacturer, Distributor, or Manufacturer/Distributor's License'.

(b) Applications for Manufacturer, Distributor, or Manufacturer/Distributor Licenses must be made on a form prescribed by the Commission.

(c) An applicant for a Manufacturer, Distributor, or Manufacturer/Distributor's License may be required to post, as a condition of issuance of the license, a bond in a manner and in an amount established by the Commission. Any such instrument must be issued by a surety company authorized to transact business in Oklahoma and must be satisfactory to the Commission.

325:80-9-2. Manufacturer's, Distributor's, or Manufacturer/Distributor's Employee License

Any employee, who works for a licensed Manufacturer, Distributor, or Manufacturer/Distributor and will be supplying gaming-related goods and/or services to the Racetrack Gaming Operator Licensee on-site at the Gaming Facility, must have a Manufacturer's Employee License, a Distributor's Employee License, or a Manufacturer/Distributor's Employee License. A Manufacturer, Distributor, or Manufacturer/Distributor License must be issued before an employee can be issued a license to represent that company. An application for Manufacturer's Employee License, Distributor's Employee License, or Manufacturer/Distributor's Employee License must be signed by an authorized representative of the Manufacturer, Distributor, or Manufacturer/Distributor for whom the employee works or will work.

SUBCHAPTER 11. REQUIREMENTS FOR VENDOR LICENSE

325:80-11-1. Approved Vendor list

The Racetrack Gaming Operator Licensee shall maintain a list of all Vendors the Racetrack Gaming Operator Licensee approves. Before doing business with the Racetrack Gaming Operator Licensee, a Vendor must be issued a Vendor License by the Commission.

325:80-11-2. Vendor License

A Vendor's License is required of any Vendor not licensed as a Manufacturer, Distributor, or Manufacturer/Distributor that conducts operations on-site at a racetrack Gaming Facility. An applicant for a Vendor's License must complete the appropriate Commission application form. That form must be signed by an authorized representative of the Racetrack Gaming Operator Licensee(s) for which the Vendor wishes to do business. A letter from the Racetrack Gaming Operator Licensee(s) authorizing the Vendor to do business may be used in lieu of a signature on the application form, If, after initial licensing, any other Racetrack Gaming Operator Licensee desires to acquire goods and/or services from the licensed Vendor, the Operator must file the letter with the Commission indicating that desire; provided that attorneys shall be exempt from the licensing requirement herein to be extent that they are providing services covered by their professional licenses.

325:80-11-3. Vendor Employee License

Any employee who works for a licensed Vendor and will be supplying goods and/or services on-site at the Gaming Facility must have a Vendor Employee License. A Vendor License must be issued before a Vendor Employee can be issued a license to represent that company. A Vendor Employee License must be signed by an authorized representative of the Vendor for whom the Vendor Employee works or will work.

325:80-11-4. Vendor disclosure requirement

(a) For each Vendor on the Racetrack Gaming Operator Licensee's list, the Operator must indicate whether the Racetrack Gaming Operator Licensee anticipates purchasing more than $500,000 of goods and/or services from the Vendor in a consecutive 12 month period. Further, for each Vendor which the Racetrack Gaming Operator Licensee anticipates expending more than $500,000 in a consecutive 12 month period, the Operator shall also indicate whether any of the Operator's key employees or any Person or entity having a 3% or more interest in the applicant Operator owns 3% or more interest in the approved Vendor.

(b) Any Vendor that receives more than $500,000 in a consecutive 12 month period for goods and/or services from a Racetrack Gaming Operator Licensee must confirm that fact by notifying in writing both the Operator and the Commission. The Racetrack Gaming Operator Licensee must maintain a list of approved Vendors including payments to such Vendors for submission to the Commission on a monthly basis.

SUBCHAPTER 13. REQUIREMENTS FOR KEY EXECUTIVE LICENSE OR GAMING EMPLOYEE LICENSE AND AMENDMENTS TO ANY EMPLOYEE LICENSE

325:80-13-1. Application required

An applicant for a Key Executive License or Gaming Employee License must submit a complete Application with his or her fingerprints in duplicate on fingerprint cards and his or her photograph in duplicate. The fingerprints will not be accepted unless the fingerprints were taken under the supervision of, and certified by, Commission licensing personnel, a federal agency, a State police officer, a county sheriff, a municipal chief of police, or sworn city or county peace officer. The photographs must be no smaller than 3" x 2" and must be satisfactory to the Commission. The photographs also must have been taken no earlier than three months before the date the application for license was filed.

325:80-13-2. When Key Executive applications are due

At the time of filing an application for license by a Racetrack Gaming Operator Licensee, applications of all known Key Executives must be submitted. Applications for other Key Executives must be filed within thirty (30) business days within employment by the Racetrack Gaming Operator Licensee.

325:80-13-3. Employer-specific nature of all Employee Licenses

All licenses issued to Key Executives, Gaming Employees, Vendor Employees and employees of Manufacturers, Distributors, or Manufacturer/Distributors shall be employer-specific, and each license shall identify not only the employee to whom the license is issued, but also specify the full name of the employing Licensee.

325:80-13-4. Amended Employee Licenses

All licenses issued to Key Executives, Gaming Employees, Vendor Employees and employees of Manufacturers, Distributors, Manufacturer/Distributors, and Independent Testing Laboratories may, upon written application of a licensed employer, other than the original employer, be amended to enable the Licensee to begin employment with a different licensed employer. An amended license issued in response to such a request shall contain the name of the employee and the full name of the new licensed employer. No Licensee may begin working for a new employer until the employee has been issued an amended license containing the name of the new employer.

325:80-13-5. License required prior to employment

With the exception of those who apply for a Key Executive License or Gaming Employee License as provided in Rule 325:80-13-8, a Key Executive or Gaming Employee of a Racetrack Gaming Operator Licensee may not be employed until such time as his or her application for a license has been completed, and the Commission has issued the applicant a Key Executive License or Gaming Employee License.

325:80-13-6. Employee Licenses - Refusal to issue or denial and license termination upon loss of employment

All employee licenses are the property of the State of Oklahoma. Any employee whose employment is terminated for any reason must surrender his or her license to the Commission

within five (5) business days of termination. An application for any type employee license may be denied for any reason that an application for a horse racing Occupation Gaming License may be denied. It may also be denied if an applicant has had a gaming or horse racing license revoked or suspended in any other jurisdiction or has been found guilty or pled guilty or no contest to any felony, or any crime involving gaming or horse racing. The grounds listed above in these Rules may also be used as a basis for refusal to issue a license.

325:80-13-7. Additional grounds for denial of Key Executive License application

In addition to the general grounds for denying any type of employee license, an application for a Key Executive License may be denied if the Commission Director of Law Enforcement finds that the applicant 1) has knowingly had a business or social relationship with a convicted felon, 2) has or has had a substance abuse problem, 3) has an employment, military, or financial history which may affect the applicant's ability to properly perform his or her duties or reflect unfavorably on the integrity of a Gaming Facility, or 4) has a reputation which may affect the applicant's ability to properly perform his or her duties or reflect unfavorably on the integrity of a Facility.

325:80-13-8. Limited pre-licensed employment for Key Executives and Gaming Employees

Applicants for a Key Executive License or Gaming Employee License who provide the required fingerprint cards, photographs, completed Application, and intent to employ statement may be issued by the Executive Director a written certification that their applications for a Key Executive License or Gaming Employee License are presently being processed. Upon the issuance of such certification to an applicant for a Key Executive License or a Gaming Employee License, the applicant may for a period of no more than 90 days be employed as a Gaming Employee by the Racetrack Gaming Operator Licensee whose name appears on the applicant's intent to employ statement. On application of such a Gaming Employee's employer, that 90 day period may be extended by the Commission Director of Law Enforcement if, and only if, the licensing process has not been completed. No further extensions are allowed.

SUBCHAPTER 15. REQUIREMENTS FOR INDEPENDENT TESTING LABORATORY LICENSE

325:80-15-1. Application required

Testing laboratories that wish to function as a Commission-approved Independent Testing Laboratory must apply to be issued an Independent Testing Laboratory License. The application must be accompanied by the required application fee and an investigation fee in an amount equal to one-half of the license fee.

(1) In addition to other information required on the application, any applicant must provide the following information for each of the last three years:

(A) address of main office and number of square feet used for testing;

(B) addresses of all satellite offices, if any, and number of square footage;

(C) number of full-time employees;

(D) number of machines tested;

(E) list of states for which the Laboratory has performed tests;

(F) list of countries for which the Laboratory has performed tests;

(G) list of states and countries in which the Laboratory has been licensed or certified.

(2) In addition, the Commission review of consideration of an application for an Independent Testing Laboratory shall include:

(A) For the testing laboratory and its parent corporation, if any, a complete corporate financial disclosure and review; a complete disclosure and review of any criminal proceedings, civil litigation or investigations by a regulatory entity; and an evaluation of its corporate good standing in the jurisdiction(s) where it is incorporated and/or does business.

(B) For its principal shareholders (10% or greater) and its officers and directors, a complete individual financial disclosure and review; a complete disclosure and review of any criminal proceedings, civil litigation or investigations by a regulatory entity; and a finding of suitability.

(C)The testing laboratory will demonstrate its relevant technical skill and capability by providing evidence of suitable testing previously conducted for state or tribal regulatory authorities. The Commission's Law Enforcement Division will conduct an on-site review of the testing laboratory's facilities as part of its evaluation and will be satisfied that the testing laboratory is qualified and competent to perform the testing required before making any recommendation for approval to the Commission.

(D) The testing laboratory must have in-house staff personnel in the following categories:

(i) Mathematicians

(ii) Mechanical, electrical and software engineering staff

(iii) Compliance engineering staff

(iv) Accounting system and communication protocol engineering specialists

(v) High-level engineering staff for new and current technology

(vi) Quality assurance staff

(E) The testing laboratory must have the ability to provide twenty-four hour, seven-day a week support for the Commission, including in-house personnel coverage.

(F)The testing laboratory must provide training and support staff for on-site field inspections to assist

and/or train Gaming Agents on the security, compliance and accounting/auditing practices that should be used, with expenses paid by the testing laboratory.

(G) The testing laboratory must provide a quality assurance staff that verifies each test result.

(H) The testing laboratory must conduct an annual due diligence investigation on each employee of the testing laboratory and maintain such due diligence files on each employee.

(I)The testing laboratory must have physical building security in terms of surveillance systems and alarms to protect confidential information.

(J) The testing laboratory must demonstrate that it possesses multiple units of the approved signature device(s); that it provides signatures of the approved software with each certification which will assist in the conduct of field audits of the equipment; and that the Laboratory has the ability to provide the specifications on the various software verification methods (i.e., KOBETRON, DataMan and other types of algorithms that allow checking of gaming equipment) to assist the Commission in determining which verification tools will be acceptable.

(K) The testing laboratory must have adequate equipment to support the submissions for testing and also, additional units available for on-site inspections when laboratory presence is requested; must provide the requested signatures by taking those signatures at the Laboratory prior to storage of the storage media independent of the supplier; and a testing laboratory shall not rely on supplier-generated signatures.

(L) During the detailed communication protocol tests that are performed on the device side and the system side, the testing laboratory must use testing tools and testing techniques that are developed in compliance with the protocol used. The testing laboratory must have the ability to develop such tools independently without having to reply on the Manufacturer for the equipment.

(M) The testing laboratory must demonstrate that the testing it performs includes complete detailed tests to examine all external and internal functions, such as examinations of memory and communication protocol with all devices, of the gaming equipment being tested.

(N) The testing laboratory must have a national reputation for honesty, independence, competence and timeliness.

SUBCHAPTER 17. FEES AND ASSESSMENTS

325:80-17-1. Payment of fees and assessments

Applicants for any license issued by the Commission under the provisions of Chapters 80, 85 and 90 of This Title must pay all fees and assessments prescribed either by law or these Rules in the manner and at the time prescribed by law and/or these Rules. Application fees and applicable assessments for all Racetrack Gaming Operator Licenses and Recipient Racetrack Gaming Licenses must be paid by the applicant at the time that an application is filed with the Commission.

SUBCHAPTER 19. CONSIDERATION OF LICENSE APPLICATION AND LICENSEE DISCIPLINARY ACTIONS

325:80-19-1. Procedures for consideration of Applications for Racetrack Gaming Operator Licenses and Independent Testing Laboratory Licenses

Applications for a Racetrack Gaming Operator License and an Independent Testing Laboratory License will be heard and issued by the Commission.

325:80-19-2. Procedures for consideration of Applications for Manufacturer, Distributor, Manufacturer/Distributor and Key Executive Licenses

Applications for a Manufacturer, Distributor, Manufacturer/Distributor and Key Executive Licenses will be determined by the Executive Director after the Commission's Law Enforcement Division completes its background investigation and, based upon that investigation, makes a recommendation to the Executive Director.

(1) If the Law Enforcement Division recommendation is that the license be approved, the Executive Director shall grant the application by issuing a license.

(2) If the recommendation of the Law Enforcement Division is that the license not be issued, the applicant shall be notified in writing of the recommendation and the reasons therefore. If the applicant wishes to contest the recommendation, the applicant shall, within ten (10) days of receipt of the notice, request in writing a hearing before the Executive Director. If a written request for such a hearing is not received in the Commission office by close of business on the tenth day after receipt of notice of adverse recommendation, the recommendation of the Law Enforcement Division shall be approved and no license shall be issued.

(3) If a written request for a hearing is received in a timely manner, the Executive Director shall conduct a hearing in accordance with the Oklahoma Administrative Procedures Act and issue Findings of Fact, Conclusions of Law, and Order. If the Executive Director Rules in favor of the applicant, the matter may be disposed of by the issuance of a license without the issuance of a formal Order. Decisions adverse to the applicant are appealable to the District Court under the Oklahoma Administrative Procedures Act.

325:80-19-3. Procedures for consideration of Applications for Vendor, Vendor Employee and Gaming Employee Licenses

Applications for a Vendor, Vendor Employee or Gaming Employee License will be determined by the Commission's Board of Stewards after the Commission's Law Enforcement Division completes its background investigation and, based upon that investigation, makes a recommendation to the Board of Stewards.

(1) If the Law Enforcement Division recommendation is that the license be approved, the Board of Stewards shall grant the application by issuing a license.

(2) If the recommendation of the Law Enforcement Division is that the license not be issued, the applicant shall be notified in writing of the recommendation and the reasons therefore. If the applicant wishes to contest the recommendation, the applicant shall, within ten (10) days on receipt of the notice, request in writing a hearing before the Board of Stewards. If a written request for such a hearing is not received in the Commission office by close of business on the tenth day after receipt of notice of adverse recommendation, the recommendation of the Law Enforcement Division shall be approved and no license shall be issued.

(3) If the written request is received in a timely manner, the Board of Stewards shall conduct a hearing in accordance with the Oklahoma Administrative Procedures Act and issue Findings of Fact, Conclusions of Law, and Order. If the Board of Stewards rules in favor of the applicant, the matter may be disposed of by issuing a license without the issuance of a formal Order. Decisions adverse to the applicant are appealable to the District Court under the Oklahoma Administrative Procedures Act.

325:80-19-4. Disciplinary actions against Racetrack Gaming Operator Licensees and Independent Testing Laboratories

Disciplinary actions against a Racetrack Gaming Operator Licensee and an Independent Testing Laboratory Licensee shall be conducted, after required written notice and hearing before the Commission, in the same manner as conducted in regard to Organization Licensees and in accordance with the Oklahoma Administrative Procedures Act.

325:80-19-5. Disciplinary actions against all other occupation gaming Licensees

Disciplinary actions against all other Occupation Gaming Licensees shall be conducted by the Board of Stewards using the same procedures for disciplinary action regarding Persons issued racing Occupation Gaming Licenses by the Commission. Any appeals from the Board of Stewards' decisions shall be appealable to the Commission.

[OAR Docket #06-1150; filed 5-26-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 85. GAMING MACHINE SPECIFICATIONS AND USE AND OPERATION REQUIREMENTS

[OAR Docket #06-1151]

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RULES:
Subchapter 1. General Provisions [NEW]
325:85-1-1. [NEW]
325:85-1-2. [NEW]
Subchapter 3. Authorized Games [NEW]
325:85-3-1. [NEW]
325:85-3-2. [NEW]
Subchapter 5. Electronic Amusement Games Specifications [NEW]
325:85-5-1. [NEW]
Subchapter 7. Electronic Bonanza-Style Bingo Games Specifications [NEW]
325:85-7-1. [NEW]
Subchapter 9. Electronic Instant Bingo Games Specifications [NEW]
325:85-9-1. [NEW]
Subchapter 11. Required Certification and Approval of Electronic Amusement Games, Electronic Bonanza-Style Bingo Games and Electronic Instant Bingo Games [NEW]
325:85-11-1. [NEW]
325:85-11-1.1. [NEW]
325:85-11-5. [NEW]
325:85-11-8.1. [NEW]
325:85-11-9. [NEW]
325:85-11-12. [NEW]
Subchapter 12. Required Certification and Verification of Compact Electronic Games and Non-Compact Electronic Games [NEW]
325:85-12-1. [NEW]
325:85-12-2. [NEW]
325:85-12-3. [NEW]
325:85-12-4. [NEW]
325:85-12-5. [NEW]
325:85-12-6. [NEW]
Subchapter 13. Cashless Transactions [NEW]
325:85-13-1. [NEW]
325:85-13-4. [NEW]
325:85-13-5. [NEW]
325:85-13-6. [NEW]
325:85-13-7. [NEW]
325:85-13-8. [NEW]
Subchapter 15. Use and Operation Requirements Applicable to Electronic Amusement Games, Electronic Bonanza-Style Bingo Games and Electronic Instant Bingo Games [NEW]
325:85-15-0. [NEW]
325:85-15-1. [NEW]
325:85-15-3. [NEW]
325:85-15-4. [NEW]
325:85-15-8. [NEW]
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325:85-15-61. [NEW]
325:85-15-62. [NEW]
325:85-15-63. [NEW]
325:85-15-64. [NEW]
Subchapter 20. Use and Operation Requirements Applicable to Compact Electronic Games and Non-Compact Electronic Games [NEW]
325:85-20-1. [NEW]
325:85-20-2. [NEW]
325:85-20-3. [NEW]
325:85-20-4. [NEW]
325:85-20-5. [NEW]
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325:85-20-8. [NEW]
325:85-20-9. [NEW]
325:85-20-10. [NEW]
325:85-20-11. [NEW]
325:85-20-12. [NEW]
325:85-20-13. [NEW]
Subchapter 21. Accounting System Requirements [NEW]
325:85-21-2. [NEW]
325:85-21-6. [NEW]
325:85-21-8. [NEW]
325:85-21-9. [NEW]
325:85-21-10. [NEW]
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325:85-21-28. [NEW]
325:85-21-29. [NEW]
325:85-21-30. [NEW]
325:85-21-31. [NEW]
325:85-21-32. [NEW]
Subchapter 25. Transportation, Receipt, Installation and Disposal of Gaming Machines [NEW]
325:85-25-1. [NEW]
325:85-25-2. [NEW]
325:85-25-3. [NEW]
325:85-25-4. [NEW]
325:85-25-5. [NEW]
325:85-25-6. [NEW]
325:85-25-7. [NEW]
Subchapter 27. Requirements for Audits Performed by Gaming Agents [NEW]
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Subchapter 5. Electronic Amusement Games Specifications [NEW]
325:85-5-1. [NEW]
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325:85-7-1. [NEW]
Subchapter 9. Electronic Instant Bingo Games Specifications [NEW]
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Subchapter 11. Required Certification and Approval of Electronic Amusement Games, Electronic Bonanza-Style Bingo Games and Electronic Instant Bingo Games [NEW]
325:85-11-1. [NEW]
325:85-11-1.1. [NEW]
325:85-11-5. [NEW]
325:85-11-8.1. [NEW]
325:85-11-9. [NEW]
325:85-11-12. [NEW]
Subchapter 12. Required Certification and Verification of Compact Electronic Games and Non-Compact Electronic Games [NEW]
325:85-12-1. [NEW]
325:85-12-2. [NEW]
325:85-12-3. [NEW]
325:85-12-4. [NEW]
325:85-12-5. [NEW]
325:85-12-6. [NEW]
Subchapter 13. Cashless Transactions [NEW]
325:85-13-1. [NEW]
325:85-13-4. [NEW]
325:85-13-5. [NEW]
325:85-13-6. [NEW]

325:85-13-7. [NEW]
325:85-13-8. [NEW]
Subchapter 15. Use and Operation Requirements Applicable to Electronic Amusement Games, Electronic Bonanza-Style Bingo Games and Electronic Instant Bingo Games [NEW]
325:85-15-0. [NEW]
325:85-15-1. [NEW]
325:85-15-3. [NEW]
325:85-15-4. [NEW]
325:85-15-8. [NEW]
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Subchapter 20. Use and Operation Requirements Applicable to Compact Electronic Games and Non-Compact Electronic Games [NEW]
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325:85-20-2. [NEW]
325:85-20-3. [NEW]
325:85-20-4. [NEW]
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325:85-20-10. [NEW]
325:85-20-11. [NEW]
325:85-20-12. [NEW]
325:85-20-13. [NEW]
Subchapter 21. Accounting System Requirements [NEW]
325:85-21-2. [NEW]
325:85-21-6. [NEW]
325:85-21-8. [NEW]
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325:85-21-10. [NEW]
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325:85-21-29. [NEW]
325:85-21-30. [NEW]
325:85-21-31. [NEW]
325:85-21-32. [NEW]
Subchapter 25. Transportation, Receipt, Installation and Disposal of Gaming Machines [NEW]
325:85-25-1. [NEW]
325:85-25-2. [NEW]
325:85-25-3. [NEW]
325:85-25-4. [NEW]
325:85-25-5. [NEW]
325:85-25-6. [NEW]
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Subchapter 27. Requirements for Audits Performed by Gaming Agents [NEW]
325:85-27-1. [NEW]

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[1] ***EDITOR'S NOTE:***

Some of the emergency rules being superseded by this permanent rulemaking action were promulgated using different numbers in an earlier emergency action published at 23 Ok Reg 1160, Docket number 06-749, effective April 6, 2005. The following list identifies Section numbers in the earlier emergency action that were numbered differently when superseded by the later emergency action. The later rule numbers were then retained in the permanent rules:

325:85-11-11. [NEW] - superseded by 325:85-11-8.1
325:85-17-1. [NEW] - superseded by 325:85-15-63
325:85-17-2. [NEW] - superseded by 325:85-15-50
325:85-17-3. [NEW] - superseded by 325:85-15-51
325:85-17-6. [NEW] - superseded by 325:85-15-52
325:85-17-7. [NEW] - superseded by 325:85-15-53
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325:85-23-4. [NEW] - superseded by 325:85-21-29
325:85-23-5. [NEW] - superseded by 325:85-21-30
325:85-23-6. [NEW] - superseded by 325:85-21-31
325:85-23-7. [NEW] - superseded by 325:85-21-32

INCORPORATED BY REFERENCE:

Not Applicable

ANALYSIS:

After SQ 712 was approved in the November, 2004 General Election, the Oklahoma Horse Racing Commission developed the original *Rules for Racetrack Gaming*. Those rules were adopted under emergency rulemaking procedures on March 17, 2005, and Governor Henry approved them April 6, 2005. In the time since approval of the original rules, some of the stakeholders - the racetracks and the horsemen's representative organizations - have contended that these original rules placed the racetracks and horsemen at a competitive disadvantage to Tribal casinos for the following reasons: a) the rules did not completely follow the language in the Act; b) further, the rules did not adequately address all of the authorized games; c) the rules introduced a stricter regulation that restricted the operation of the games, resulting in seemingly unnecessary regulation and language not found in the Act; and d) the original rules also set criteria and specifications regarding the functioning of the games that unfortunately did not allow for technological advances in the evolution of the authorized games.

The Ad Hoc Committee on Gaming Rules was appointed by Chairman Calvert at the December 15, 2005 Commission meeting to address the concerns. Membership on the Ad Hoc Committee included some of the key stakeholders. The Committee, chaired by Chairman Randy Calvert, consisted of three (3) Commissioners of the Oklahoma Horse Racing Commission [Commissioners Randy Calvert, Roger Cole and Patrick Grimmett], the Executive Director of the Horse Racing Commission [Constantin A. Rieger], the Commission Counsel [Neal Leader], one (1) representative of the Oklahoma Quarter Horse Racing Association [Debbie Schauf], one (1) representative of the Thoroughbred Racing Association of Oklahoma [Joe Lucas], racetrack representatives [Scott Daruty for Remington Park, Bob Rabon for Blue Ribbon Downs and Mark Enterline for Will Rogers Downs], Oklahoma Thoroughbred Association [R.D. Logan] and John Smicklas [Thoroughbred Owner]. Through a number of long meetings from December, 2005 through March, 2006, rule amendments were drafted. At the March 23, 2006 Rescheduled Regular Meeting, the Commission considered the rule amendments and adopted them under both emergency and permanent rulemaking procedures.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

325:85-1-1. Purpose

The objective of this chapter is to provide for the regulation, implementation and enforcement of provisions of the Act that pertain to the operation of Authorized Games by Racetrack Gaming Operator Licensees.

325:85-1-2. Definitions

Unless otherwise defined below, terms used in this chapter have the same meanings as set forth in the State-Tribal Gaming Act.

"Act" means the State-Tribal Gaming Act enacted by the people with passage of State Question 712.

"Authorized games" means Electronic Amusement Games as defined in the Act, Electronic Bonanza-Style Bingo Games as defined in the Act, Electronic Instant Bingo Games as defined in the Act, Compact Electronic Games as defined in these Rules, and Non-Compact Electronic Games as defined in these Rules.

"Central computer" means a computer or computers to which Player Terminals may be linked to allow competition in Electronic Bonanza-Style Bingo Games;.

"Commission" means the Oklahoma Horse Racing Commission.

"Compact" means a Model Compact or any other tribal-state compact entered into between the State of Oklahoma and a federally recognized Indian tribe in accordance with the Indian Gaming Regulatory Act, and which has been approved by the United States Secretary of the Interior, as evidenced by publication of the approval in the Federal Register.

"Compact Electronic Game" means any Gaming Machine allowed by Oklahoma law that a federally recognized Indian tribe in Oklahoma is authorized to use by virtue of a Compact.

"Component" means a part of a Gaming Machine that is necessary for the proper operation and essential function of the Gaming Machine, including but not limited to a hopper, coin acceptor, microprocessor and related circuitry, Program Storage Device, bill acceptor, cashless system, progressive system, monitoring system, meter, and any other parts the Commission determines are Components; a Component is necessary for the proper operation and essential function of a Gaming Machine if it affects, directly or indirectly, the Gaming Machine's operation, game outcome, security, record-keeping, or communication with the central monitoring system; parts such as light bulbs, buttons, wires, decorative glass, fuses, batteries, handles, springs, brackets, and locks are not Components if they do not directly or indirectly affect the Gaming Machine's operation, game outcome, security, record-keeping, or communication with the central monitoring system.

"Control," when used as a noun, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person or to exercise significant influence over management and policies due to financial investment, assumption of debts or expenses, or other monetary or non-monetary considerations extended to the applicant or Licensee; when used as a verb, "Control" means to exert, directly or indirectly, such power, or to be in a position to exert such power.

"Electronic Amusement Game" means a game that is played in an electronic environment in which a player's performance and opportunity for success can be improved by skill that conforms to the Standards set forth in the Act.

"Electronic Bonanza-Style Bingo Game" means a game played in an electronic environment in which some or all of the numbers or symbols are drawn or electronically determined before the bingo cards for that game are sold that conforms to the Standards set forth in the Act.

"Electronic Instant Bingo Game" means a game played in an electronic environment in which a player wins if his or her electronic instant bingo card contains a combination of numbers or symbols that was designated in advance of the game as a winning combination. There may be multiple winning combinations in each game and multiple winning cards.

"Executive director" means the executive director of the Commission.

"Gaming agent" means a Commission employee trained in machine gaming, responsible for on-site enforcement of the Act and these Rules and other regulatory responsibilities as assigned by the Executive Director.

"Game play credits" means a method of representing value obtained from the exchange of cash or cash equivalents, or earned as a prize, in connection with the play of Authorized Games. Game Play Credits may be redeemed for cash or a cash equivalent.

"Gaming facility" means that area within an Organization Licensee's Racetrack Premises approved by the Commission that has been set aside for the use of Authorized Games and related activities and access to which is limited to patrons 18 years of age or older.

"Gaming machine" means a contrivance designed primarily for gambling purposes which for a consideration affords the player an opportunity to obtain something of value, the award of which is determined by chance, or any token, chip, paper, receipt or other document which evidences, purports to evidence or is designed to evidence participation in a lottery or the making of a bet. The fact that the prize is not automatically paid by the device does not affect its character as a gambling device.

"Independent testing laboratory" means a laboratory with a national reputation for honesty, independence, competence and timeliness that is demonstrably competent and qualified to scientifically test and evaluate devices for compliance with the Act and to otherwise perform the functions assigned to it in the Act. An Independent Testing Laboratory shall not be owned or Controlled by an Organization Licensee, an Indian tribe, the State, or any Manufacturer, supplier or operator of Gaming Machines. The use of an Independent Testing Laboratory for any purpose related to the operation of Authorized Games by an Organization Licensee under the Act shall be made from a list of one or more laboratories approved by the Commission.

"Manufacturer" means a Person who manufactures, fabricates, assembles, produces, programs, refurbishes, or makes Modification to any Gaming Machine or Component thereof, or associated Program Storage Device for sale, lease, distribution, use or play by a Racetrack Gaming Operator Licensee in the State of Oklahoma.

"Model Compact" means a tribal-state compact between the State of Oklahoma and an Indian tribe entered into pursuant to 3A., O.S., § 280 and 281.

"Modification" means a change or alteration in an approved Gaming Machine or Component thereof that affects the manner or mode of play (including the percentage paid by the Gaming Machine), as well as a change in control or graphics programs. "Modification" does not include a conversion from one approved mode of play to another approved mode of play, replacement of one game for another approved game, replacement of one Component with another pre-approved Component, or the rebuilding of a previously approved Gaming Machine with pre-approved Components.

"Non-Compact Electronic Game" means any Gaming Machine that a federally recognized Indian tribe in Oklahoma is lawfully permitted to operate without a Compact under the Indian Gaming Regulatory Act. In determining whether a Gaming Machine qualifies as a Non-Compact Electronic Game, it shall be presumed that an Indian tribe is lawfully permitted to operate such Gaming Machine if such Indian tribe is operating such Gaming Machine within the State of Oklahoma and each of the following is true: (a) the National Indian Gaming Commission has not issued a Notice of Violation related to the unlawfulness of the Gaming Machine, instituted a formal action against the Indian tribe seeking to cause the Indian tribe to cease operating the Gaming Machine due to the unlawfulness of such Gaming Machine, issued an Order of Closure related to the Gaming Machine due to the unlawfulness of such Gaming Machine, nor assessed a civil fine related to the unlawfulness of the Gaming Machine; and (b) the Oklahoma Office of State Finance has not sent formal written notice to the Indian Tribe requesting that the Indian tribe cease operating the Gaming Machine due to the unlawfulness of such Gaming Machine. This presumption is a rebuttable presumption, which shall be deemed rebutted if substantial information to the contrary is presented or available to the Commission or its Executive Director.

"Organization license" means a license issued by the Commission which authorizes the licensee to conduct a race meeting in Oklahoma and accept pari-mutuel wagers on the outcome of live and simulcast horse racing.

"Organization licensee" means any Person receiving an Organization License issued by the Commission.

"Person" means any individual, partnership, corporation, or other association or entity.

"Player Terminals" means electronic terminals housed in cabinets with input devices and video screens or electromechanical displays on which players play Authorized Games.

"Program storage device" means an EPROM (Erasable Programmable Read-Only Memory), hard drive, DVD, CD-ROM or other storage medium which is used for storing program instructions in a Gaming Machine, system or other associated equipment.

"Racetrack gaming operator license" means a license issued by the Commission which authorizes an Organization Licensee to conduct Authorized under the regulation, implementation and enforcement of the Commission.

"Racetrack gaming operator licensee" means any Organization Licensee which has been issued a Racetrack Gaming Operator License by the Commission.

"Racetrack premises" means the property that is owned or leased by the Organization Licensee that is used for racetrack purposes.

"Rules" means the Commission's *Rules for Racetrack Gaming*.

"Standards" means the descriptions and specifications of Electronic Amusement Games, Electronic Bonanza-Style

Bingo Games, and Electronic Instant Bingo Games, or Components thereof, as set forth in the Act, including technical specifications for Component parts, requirements for cashless transaction systems, software tools for security and audit purposes, and procedures for operation of such games.

"State" means the State of Oklahoma.

"This Title" means Title 325 of the Oklahoma Administrative Code.

"Use and operation requirements" means (a) with respect to Electronic Amusement Games, Electronic Bonanza-Style Bingo Games and Electronic Instant Bingo Games, the use and operation requirements set forth in Subchapter 17, and (b) with respect to Compact Electronic Games and Non-Compact Electronic Games, the use and operation requirements set forth in Subchapter 19.

SUBCHAPTER 3. AUTHORIZED GAMES

325:85-3-1. Types of Authorized Games

Subject to all provisions of the Act, including, but not limited to, limitations on the number of Player Terminals, a Racetrack Gaming Operator Licensee is authorized to conduct the following types of machine gaming, generally referred to as "Authorized Games , are":

(1) "Electronic Amusement Game" as defined in the Act.

(2) "Electronic Bonanza-Style Bingo Game" as defined in the Act.

(3) "Electronic Instant Bingo Game" as defined in the Act.

(4) "Compact Electronic Game" as defined in these Rules.

(5) "Non-Compact Electronic Game" as defined in these Rules.

325:85-3-2. Waiver by Commission

The Commission shall have the power to waive any requirement set forth in these Rules (including without limitation the rules set forth in Chapters 80, 85 and 90) if the Commission finds that such waiver is in the best interest of the public and the horse racing industry of the State of Oklahoma. The Executive Director shall have the power to waive any Use and Operation Requirements if the Executive Director finds such waiver is in the best interest of the public and the horse racing industry of the State of Oklahoma.

SUBCHAPTER 5. ELECTRONIC AMUSEMENT GAMES SPECIFICATIONS

325:85-5-1. Required specifications

Electronic Amusement Games must meet the following specifications:

(1) Electronic Amusement Games shall be played through the use of Player Terminals which, following the payment of a fee, present games in which the player can win prizes in a format in which a player's performance can be improved by skill.

(2) Electronic Amusement Games are games in which a player's performance can be improved by skill. Each Player Terminal employed in an Electronic Amusement Game shall only offer games that meet the following minimum standards:

(A) Each Electronic Amusement Game must require decisions or actions by players that could affect the result of the game;

(B) No auto-hold, "smart-hold," or similar feature shall be employed which permits the Player Terminal to automatically determine optimum play or make decisions for players;

(C) Each Player Terminal must prominently display either on the Player Terminal or on a help screen:

(i) the rules of the game and instructions and other information regarding the concept of the game so that a novice player can understand how to improve his or her performance, and

(ii) possible winning combinations based on the amounts paid to play the game and the other information required in this section. Such information may not be incomplete, confusing or misleading;

(D) In Electronic Amusement Games in which players are competing against others, the players shall be informed about whether and how winning prizes will be shared; and

(E) No Electronic Amusement Game shall base its outcome on the number or ratio of prior wins to prior losses or any other factor relating to the profit or revenues retained by the operator from prior plays of the game.

(3) Following any play on a Player Terminal, data shall be maintained electronically and shall be viewable either electronically or by printed report. Such data shall provide basic information regarding the amount paid in, the game played, the result, and the prize awarded, if any.

(4) Player Terminals must be operated either through the insertion of coins or currency, cash voucher, or through the use of a cashless transaction system. The available games must be displayed on the Player Terminal's video screen or otherwise prominently displayed on the Player Terminal. The rules of the game also must be displayed either prominently on the Player Terminal or on a help screen, and include sufficient information to alert novice players on the concept of the game so that a novice player can understand how to improve his or her performance. Depending on the game selected, the player must physically interact with the screen (through touch screen technology) or by depressing or activating buttons or other input devices, to cause an intended result.

(5) Following play on a Player Terminal, the result shall be displayed and prizes awarded. Prizes may be dispensed in the form of cash, coin, cash voucher, merchandise or through a cashless transaction system.

(6) Every play of the game shall be recorded, monitored and regulated to ensure full accountability and integrity of play, in accordance with the provisions of the Act and the Use and Operation Requirements.

(7) For auditing and security purposes, any Electronic Amusement Game shall include and have available a secure software tool that conforms to the Use and Operation Requirements to audit the software of each Electronic Amusement Game. Such tool shall be used only during authorized audits of Electronic Amusement Games, or in cases of player disputes.

SUBCHAPTER 7. ELECTRONIC BONANZA-STYLE BINGO GAMES SPECIFICATIONS

325:85-7-1. Required specifications [273 of Title 3A]

Electronic Bonanza-Style Bingo Games must meet the following specifications:

(1) Electronic Bonanza-Style Bingo Games authorized by the Act shall only be conducted using a system which uses linked Player Terminals which allow players to purchase and play electronic bonanza-style bingo cards. Players compete, following the payment of a fee, to be the first player to cover a previously designated bingo pattern using a set of numbers or symbols at least some of which were drawn or electronically determined before the sale of bingo cards began. The first player to cover the game-winning pattern wins the game-winning prize. Interim and consolation prizes also may be awarded.

(2) Player Terminals must be operated either through the insertion of coins or currency, cash voucher, or through the use of a cashless transaction system. The available games must be displayed on the Player Terminal's video screen or otherwise prominently displayed on the Player Terminal. The rules of the game also must be displayed either prominently on the Player Terminal or a help screen.

(3) After the player purchases a bingo card, the Player Terminal must cover any numbers or symbols on the player's bingo card that match numbers or symbols previously drawn or electronically determined for that game.

(4) Although the results of the bingo game may be shown using entertaining video and/or mechanical displays, the player have the option to view the electronic bingo card and current ball draw on the video screen of the Player Terminal.

(5) Following play on a Player Terminal, the result shall be displayed and prizes awarded. Prizes may be dispensed in the form of cash, coin, cash voucher, merchandise or through a cashless transaction system.

SUBCHAPTER 9. ELECTRONIC INSTANT BINGO GAMES SPECIFICATIONS

325:85-9-1. Required specifications [274 of Title 3A]

Electronic Instant Bingo Games must meet the following specifications:

(1) Electronic Instant Bingo Games authorized by the Act shall only use Player Terminals which allow players to purchase and play electronic instant bingo cards. Players receive, after the payment of a fee, an electronic instant bingo card. A player wins if his or her card contains a combination of numbers or symbols that was designated in advance of the game as a winning combination. There may be multiple winning combinations in each game and multiple winning cards.

(2) Player Terminals must be operated either through the insertion of coins or currency, cash voucher, or through the use of a cashless transaction system. The available games must be displayed on the Player Terminal's video screen or otherwise prominently displayed on the Player Terminal. The rules of the game also must be displayed either prominently on the Player Terminal or on a help screen.

(3) After the player purchases an electronic instant bingo card, the combination of numbers or symbols on that card is revealed to the player.

(4) The results of the electronic instant bingo card may be shown to the player using entertaining video and/or mechanical displays.

(5) Following play on a Player Terminal, the result must be displayed and prizes awarded. Prizes may be dispensed in the form of cash, coin, cash voucher, merchandise or through a cashless transaction system.

SUBCHAPTER 11. REQUIRED CERTIFICATION AND APPROVAL OF ELECTRONIC AMUSEMENT GAMES, ELECTRONIC BONANZA-STYLE BINGO GAMES AND ELECTRONIC INSTANT BINGO GAMES

325:85-11-1. Certification by Independent Testing Laboratory and Commission approval required

(a) Before any Electronic Amusement Game, Electronic Bonanza-Style Bingo Game, or Electronic Instant Bingo Game, or any Component thereof, may be placed into operation by a Racetrack Gaming Operator Licensee, the Racetrack Gaming Operator Licensee shall first have obtained and submitted to the Commission or the Executive Director a written certification from the Manufacturer that upon installation, each such game or Component thereof:

(1) Conforms to the Standards contained in Act and to the Use and Operation Requirements all as certified by an Independent Testing Laboratory;

(2) Can be used with Components manufactured by others in accordance with open architectural and communication standards, platform and protocols approved by the Commission that promotes competition among Manufacturers and Vendors of equipment and Components for such games; and

(3) Operates in accordance with the Standards contained in the Act and with the Use and Operation Requirements.

(b) Further, before any Electronic Amusement Game, Electronic Bonanza-Style Bingo Game, or Electronic Instant Bingo Game, or Component thereof, may be placed into operation, Commission or Executive Director approval is required. The Commission or Executive Director shall review and approve an Electronic Amusement Game, Electronic Bonanza-Style Bingo Game, or Electronic Instant Bingo Game, or any Component thereof, based solely on (a) the Standards, subject to modification in accordance with subsection B of 268 of Title 3A, (b) the Use and Operation Requirements, and (c) the certification received from the Independent Testing Laboratory.

325:85-11-1.1. Certification reciprocity

A Racetrack Gaming Operator Licensee may rely on any certification of an Electronic Amusement Game, Electronic Bonanza-Style Bingo Game, or Electronic Instant Bingo Game, or Component thereof, previously approved by the Commission for any other Racetrack Gaming Operator Licensee. The Racetrack Gaming Operator Licensee may also rely on any certification of an Electronic Amusement Game, Electronic Bonanza-Style Bingo Game, or Electronic Instant Bingo Game, or Component thereof, obtained by any Indian tribe operating under a Model Compact and approved pursuant to the provisions of the Act.

325:85-11-5. Submission of prototype for testing by Independent Testing Laboratory required

(a) A prototype of an Electronic Amusement Game, Electronic Bonanza-Style Bingo Game, or Electronic Instant Bingo Game, or any Component thereof, which a Racetrack Gaming Operator Licensee intends to offer for play shall be tested and certified by an Independent Testing Laboratory as meeting the Standards contained in the Act and the Use and Operation Requirements.

(b) A Racetrack Gaming Operator Licensee shall provide, or require that the Manufacturer or Vendor provide to the Independent Testing Laboratory a written request as to each game for which certification is sought, any fees required to be deposited with the Independent Testing Laboratory, and, on a confidential basis: two (2) copies of the game illustrations, schematics, block diagrams, circuit analyses, technical and enterprise manuals, program object and source codes, hexadecimal dumps (the compiled computer program represented in base 16 format), and any other information requested by the Independent Testing Laboratory. The Racetrack Gaming Operator Licensee shall send copies of the requests for certification to the Commission when made and shall make all materials submitted to the Independent Testing Laboratory available to the Commission upon request. Any materials so submitted which are designated by the Manufacturer or Vendor as proprietary shall remain confidential and shall not be subject to the disclosure requirements of the Oklahoma Open Records Act.

(c) If requested by the Independent Testing Laboratory, the Racetrack Gaming Operator Licensee shall require the Manufacturer or Vendor to transport not more than two (2) working models of the game for which certification is sought to a location designated by the Independent Testing Laboratory for testing, examination, and/or analysis. Neither the State nor the Independent Testing Laboratory shall be liable for any costs associated with the transportation, testing, examination, or analysis, including any damage to the Components of the game. If requested by the Independent Testing Laboratory, the Racetrack Gaming Operator Licensee shall require the Manufacturer or Vendor to provide specialized equipment or the services of an independent technical expert to assist with the testing, examination, and/or analysis. At the conclusion of each test, the Independent Testing Laboratory shall provide to the Commission a report that contains findings, conclusions and a certification that the game conforms or fails to conform to the Standards contained in the Act. If the Independent Testing Laboratory determines that the game fails to conform to such Standards, and if Modifications can be made which would bring the game into compliance, the report may contain recommendations for such Modifications. The Independent Testing Laboratory shall retest for compliance following such Modifications. The Independent Testing Laboratory shall report all findings and conclusions to the Racetrack Gaming Operator Licensee, the Manufacturer/Vendor and the Commission provided that at any time prior to issuance of a final report by the Independent Testing Laboratory, the Racetrack Gaming Operator Licensee may instruct it to terminate the process,, in which case no report shall be made.

325:85-11-8.1. Procedures for Commission approval of Gaming Machines and Components

(a) The Commission, through the Executive Director, shall review and approve a proposed Electronic Amusement Game, Electronic Bonanza-Style Bingo Game, or Electronic Instant Bingo Game, or any Component thereof, based solely on (1) the Standards, subject to modification in accordance with subsection B of 268 of Title 3A, (2) the Use and Operation Requirements, and (3) the report and certification received from the Independent Testing Laboratory. The Commission's review shall be completed within twenty (20) days of receipt of: (1) the report and certification from the Independent Testing Laboratory, or (2) evidence that the Gaming Machine or Component thereof is entitled to reciprocity pursuant to Section 325:85-11-2. With respect to Modifications to previously approved games, the Commission's review shall be completed within ten (10) days of the receipt of the certification of the Modification.

(b) The game shall be deemed approved if the Executive Director does not disapprove the proposed game within the twenty (20) day or ten (10) day period, as may be applicable. If within the twenty (20) day or ten (10) day periods described in this section, the Executive Director gives notice to the Racetrack Gaming Operator Licensee that it has disapproved a proposed game, such game shall not be placed in any Gaming Facility or, if already there, shall be removed or taken offline for play, to allow time for an appeal to be made in accordance

with the applicable appeal process if an appeal is sought. The sole issue in the appeal process shall be whether the game, or a Component thereof, meets the Standards and the Use and Operation Requirements. The Executive Director and Commission staff shall have the authority to discuss the Independent Testing Laboratory's report with representatives of the Independent Testing Laboratory without any cost to the Commission and to physically review any game as part of the applicable appeal process.

325:85-11-9. Submitting Modifications to a previously certified item

No Modification to any Electronic Amusement Game, Electronic Bonanza-Style Bingo Game, or Electronic Instant Bingo Game, or Component thereof, may be made by a Racetrack Gaming Operator Licensee after it is tested, certified and approved, without certification of the Modification by the Independent Testing Laboratory and approval thereof by the Commission, through the Executive Director. In situations where immediate Modifications are necessary to preserve the integrity of a game that has been operating pursuant to an approval obtained under this section, the Independent Testing Laboratory may issue an emergency certification of the Modification based on information provided to it by the Racetrack Gaming Operator Licensee or obtained independently, so long as such certification must be issued immediately to preserve the integrity of the game, and such certification would likely be issued under ordinary circumstances. Such emergency certifications shall be deemed to be temporarily approved by the Commission and remain in effect until the Commission takes final action under this section on the certification.

325:85-11-12. Procedures for appeal of decision disapproving Gaming Machines or Components

Appeals from a disapproval by the Executive Director shall be made to the District Court in accordance with the Oklahoma Administrative Procedures Act.

SUBCHAPTER 12. REQUIRED CERTIFICATION AND VERIFICATION OF COMPACT ELECTRONIC GAMES AND NON-COMPACT ELECTRONIC GAMES

325:85-12-1. Certification by Independent Testing Laboratory and Commission approval required

(a) Before any Compact Electronic Game or Non-Compact Electronic Game, or Component thereof, may be placed into operation by a Racetrack Gaming Operator Licensee, the Racetrack Gaming Operator Licensee shall first have obtained and submitted to the Commission or the Executive Director a written certification from the Manufacturer containing:

(1) A statement that upon installation, such game or Component thereof, is the same as a game that is being operated by a federally recognized Indian tribe in Oklahoma;

(2) A statement that such game conforms to the Use and Operation Requirements, as certified by an Independent Testing Laboratory;

(3) The name of the Indian tribe referred to in the preceding clause, and the location of the Indian tribe's facility within the State of Oklahoma where such game is being operated;

(4) A statement as to whether such game is being operated pursuant to a Compact, and if so including a copy of such Compact; and

(5) If such game is being operated pursuant to a Compact and if such Compact requires that the game be certified by a testing laboratory, a copy of the certificate required by the Compact (it being acknowledged that the testing laboratory preparing such certificate must meet the qualifications, if any, contained in the Compact).

(b) Upon receipt of the certification, the Commission or Executive Director shall review and approve a proposed Compact Electronic Game or Non-Compact Electronic Game, or Component thereof, shall include consideration of the following: (a) the certification of the Manufacturer that the game is the same as a game that is being operated by a federally recognized Indian tribe in Oklahoma, (b) the certification of the Independent Testing Laboratory that such game conforms to the Use and Operation Requirements, and (c) if such game is being operated pursuant to a Compact and if such Compact requires that the game be certified by a testing laboratory, the Commission's or Executive Director's receipt of a copy of the certificate required by the Compact (it being acknowledged that the testing laboratory preparing such certificate must meet the qualifications, if any, contained in the Compact).

325:85-12-2. Certification reciprocity

A Racetrack Gaming Operator Licensee may rely on any certification of a Compact Electronic Game or Non-Compact Electronic Game, or Component thereof, previously approved by the Commission for any other Racetrack Gaming Operator Licensee. The Racetrack Gaming Operator Licensee may also rely on any certification of a Compact Electronic Game or Non-Compact Electronic Game, or Component thereof, obtained by an Indian tribe and approved pursuant to the provisions of the Act.

325:85-12-3. Submission of Prototype for testing by Independent Testing Laboratory required

(a) A prototype of a Compact Electronic Game or Non-Compact Electronic Game, or Component thereof, which a Racetrack Gaming Operator Licensee intends to offer for play shall be tested and certified by an Independent Testing as conforming to the Use and Operation Requirements.

(b) A Racetrack Gaming Operator Licensee shall provide, or require that the Manufacturer or Vendor provide, to the Independent Testing Laboratory a written request as to each game

for which certification is sought, any fees required to be deposited with the Independent Testing Laboratory, and, on a confidential basis, all information requested by the Independent Testing Laboratory in order to make such a determination. The Racetrack Gaming Operator Licensee shall send copies of the requests for certification to the Commission when made and shall make all materials submitted to the Independent Testing Laboratory available to the Commission upon request. Any materials so submitted which are designated by the Manufacturer or Vendor as proprietary shall remain confidential and shall not be subject to the disclosure requirements of the Oklahoma Open Records Act.

(c) If requested by the Independent Testing Laboratory, the Racetrack Gaming Operator Licensee shall require the Manufacturer or Vendor to transport not more than two (2) working models of the game for which certification is sought to a location designated by the Independent Testing Laboratory for testing, examination, and/or analysis. Neither the State nor the Independent Testing Laboratory shall be liable for any costs associated with the transportation, testing, examination, or analysis, including any damage to the Components of the game. If requested by the Independent Testing Laboratory, the Racetrack Gaming Operator Licensee shall require the Manufacturer or Vendor to provide specialized equipment or the services of an independent technical expert to assist with the testing, examination, and/or analysis. At the conclusion of each test, the Independent Testing Laboratory shall provide to the Commission a report that contains findings, conclusions and a certification that the game conforms or fails to conform to the Use and Operation Requirements. If the Independent Testing Laboratory determines that the game fails to satisfy such requirements, and if Modifications can be made which would bring the game into compliance, the report may contain recommendations for such Modifications. The Independent Testing Laboratory shall retest for compliance following such Modifications. The Independent Testing Laboratory shall report all findings and conclusions to the Racetrack Gaming Operator Licensee, the Manufacturer/Vendor and the Commission, provided that at any time prior to issuance of a final report by the Independent Testing Laboratory, the Racetrack Gaming Operator Licensee may instruct it to terminate the process, in which case no report shall be made.

325:85-12-4. Procedures for Commission approval of Gaming Machines and Components

(a) The Commission, through the Executive Director, shall review and approve a proposed Compact Electronic Game or Non-Compact Electronic Game, or Component thereof, based solely on the reports and certifications received from the Manufacturer and the Independent Testing Laboratory, and if such game is being operated pursuant to a Compact and if such Compact requires that the game be certified by a testing laboratory, the Commission's or Executive Director's receipt of a copy of the certificate required by the Compact (it being acknowledged that the testing laboratory preparing such certificate must meet the qualifications, if any, contained in the Compact). The Commission's review shall be completed within twenty (20) days of receipt of: (1) the reports and certifications from the Manufacturer and the Independent Testing Laboratory, or (2) evidence that the Gaming Machine or Component thereof is entitled to reciprocity pursuant to Section 325:85-13-2. With respect to Modifications to previously verified games, the Commission's review shall be completed within ten (10) days of the receipt of the certification of the Modification.

(b) The game shall be deemed approved if the Executive Director does not disapprove the proposed game within the twenty (20) day or ten (10) day period, as may be applicable. If within the twenty (20) day or ten (10) day periods described in this section, the Executive Director gives notice to the Racetrack Gaming Operator Licensee that it has disapproved a proposed game, such game shall not be placed in any Gaming Facility or, if already there, shall be removed or taken offline for play, to allow time for an appeal to be made in accordance with the applicable appeal process if an appeal is sought. The sole issue in the appeal process shall be whether the game, or a Component thereof, is the same as a game that is being operated by a federally recognized Indian tribe in Oklahoma and conforms to the Use and Operation Requirements. The Executive Director and Commission staff shall have the authority to discuss the Independent Testing Laboratory's report with representatives of the Independent Testing Laboratory without any cost to the Commission and to physically review any game as part of the applicable appeal process.

325:85-12-5. Submitting Modifications to a previously certified item

No Modification to any Compact Electronic Game or Non-Compact Electronic Game, or Component thereof, may be made by a Racetrack Gaming Operator Licensee after it is tested, certified and approved, without certification of the Modification by the Manufacturer (stating that the game as modified is the same as a game being operated by a federally recognized Indian tribe in Oklahoma) and by the Independent Testing Laboratory (stating that the game conforms to the Use and Operation Requirements) and approval thereof by the Commission, through the Executive Director. In situations where immediate Modifications are necessary to preserve the integrity of a game that has been operating pursuant to an approval obtained under this section, the Independent Testing Laboratory may issue an emergency certification of the Modification based on information provided to it by the Racetrack Gaming Operator Licensee or obtained independently, so long as such certification must be issued immediately to preserve the integrity of the game, and such certification would likely be issued under ordinary circumstances. Such emergency certifications shall be deemed to be temporarily approved by the Commission and remain in effect until the Commission takes final action under this section on the certification.

325:85-12-6. Procedures for appeal of decision disapproving Gaming Machines or Components

Appeals from a disapproval by the Executive Director shall be made to the District Court in accordance with the Oklahoma Administrative Procedures Act.

SUBCHAPTER 13. CASHLESS TRANSACTIONS

325:85-13-1. General cashless transaction requirements [277 of Title 3A]

(a) The following standards shall be met in connection with any cashless transaction system:

(1) All player account information must be stored on at least two (2) separate nonvolatile media;

(2) An audit file must be kept of all financial transactions against the account. This file must be stored in at least two (2) separate nonvolatile media, and be accessible for purposes of audit and disputes resolution to authorized individuals. This file must be available on-line for a minimum of thirty (30) days, after which it must be available off-line for a minimum of one hundred eighty (180) days;

(3) Access controls must be in place to guarantee that unauthorized individuals will not have access to account information or history;

(4) Passwords or personal identification numbers (PINs), if used, must be protected from unauthorized access;

(5) All means for communicating information within the system shall conform to the Standards and the Use and Operation Requirements;

(6) Player accounts shall follow accounting procedures which are designed to verify and protect the accurate recording of all player transactions;

(7) Any card or other tangible instrument issued to a player for the purpose of using the cashless transaction system shall bear on its face a control or inventory number unique to that instrument;

(8) Encoded bearer instruments printed or magnetic may include coupons and other items distributed or sold for game play, promotional, advertising or other purposes, but may not include cash. Such instruments must be in electronically readable form in addition to having unique identification information printed on the instrument face. The daily and monthly reporting must include with respect to such instruments:

(A) cash converted to Game Play Credits,

(B) outstanding unredeemed balance,

(C) Game Play Credits converted to cash,

(D) Game Play Credits used, and

(E) Game Play Credits won;

(9) All customer accounts or instruments must have a redemption period of at least fourteen (14) days; and

(10) No ATM card, financial institution debit card or credit card shall be used as part of any cashless transaction system.

(b) Any "smart card" system which the licensee intends to implement as part of the cashless transaction system shall be tested by an Independent Testing Laboratory approved by the Commission to ensure the integrity of player funds. Any smart card must store on the card or on the system using the card an audit trail of the last ten (10) transactions involving the use of the card. Each transaction record must include, at a minimum, the type of transaction, the amount of the transaction, the date of the transaction, the time of the transaction, and the identification of the Player Terminal or cashier terminal or other points of cash exchange where the transaction occurred. The minimum daily and monthly reporting for smart card activity must include:

(1) Total of cash transferred to smart cards;

(2) Total of smart card amounts transferred to cash;

(3) Total of smart card amounts transferred to Game Play Credits;

(4) Total of Game Play Credits transferred to smart card amounts; and

(5) Total unredeemed smart card balance.

(c) Systems shall be permissible that allow player tracking, maintenance tracking, and other gaming management or marketing functions. These systems shall not interfere with, or in any way affect, the outcome of any game being played or the accuracy of any information or records required to be maintained or reported by the Use and Operation Requirements or applicable law.

325:85-13-4. Security requirements

The communication process used by the Player Terminal and the host system must be robust and stable enough to secure each cashless transaction such that failure event(s) can be identified and logged for subsequent audit and reconciliation.

325:85-13-5. Prevention of unauthorized transactions

Sufficient controls shall be implemented by the host system to ensure that games are prevented from responding to commands for crediting outside of properly authorized cashless transactions (hacking). Sufficient controls must be in place to allow all cashless diagnostic activity that affects the Player Terminal's associated electronic meters to be audited by the Commission and those acting on its behalf.

325:85-13-6. Diagnostic Tests on a Cashless Player Terminal

Sufficient controls must be in place to allow all cashless diagnostic activity that affects the Player Terminal's associated electronic meters to be audited by the Commission and those acting on its behalf.

325:85-13-7. Transaction auditing

The system shall have the ability to produce logs and reports in both electronic form and hard copy for all pending and completed cashless transactions. These logs and reports shall be capable of being filtered by:

(1) Machine number;

(2) Patron account; and
(3) Time/date

325:85-13-8. Financial and player reports

The system shall have the ability to produce the following financial and player reports, both in electronic form and hard copy:

(1) Patron Account Summary and Detail Reports. These reports shall be immediately available to a patron upon request. These reports shall include beginning and ending account balance, transaction information depicting Player Terminal number, amount, and date/time.

(2) Liability Report. This report shall include the previous day's starting value of outstanding cashless liability, aggregate cashless-in and out totals, and ending cashless liability.

(3) Cashless Meter Reconciliation Summary and Detail Reports. These reports shall reconcile each participating Player Terminal's cashless meter(s) against the host system's cashless activity.

(4) Cashier Summary and Detail Reports. These reports shall include patron account, buy-ins and cash-out, amount of transaction, and date and time of transaction.

SUBCHAPTER 15. USE AND OPERATION REQUIREMENTS APPLICABLE TO ELECTRONIC AMUSEMENT GAMES, ELECTRONIC BONANZA-STYLE BINGO GAMES AND ELECTRONIC INSTANT BINGO GAMES

325:85-15-0. Applicability

The Use and Operation Requirements set forth in this Subchapter 17 shall apply only to Electronic Amusement Games, Electronic Bonanza-Style Bingo Games and Electronic Instant Bingo Games. The Use and Operation Requirements set forth in this Subchapter 17 shall not apply to Compact Electronic Games or Non-Compact Electronic Games.

325:85-15-1. General Player Terminal specifications

Player Terminals shall conform to the following standards:

(1) No Player Terminal shall be capable of being used as a stand-alone unit for the purposes of engaging in any game not permitted by the Act;

(2) In addition to a video monitor or other electromechanical display, each Player Terminal may have one or more of the following: a printer, graphics and signage;

(3) Each Player Terminal may have one or more of the following: electronic buttons, touch screen capability, and a mechanical, electromechanical or electronic means of activating the game and providing player input, including a means for making player selections and choices in games;

(4) Each Player Terminal shall have a nonvolatile backup memory or its equivalent, which shall be maintained in a secure compartment on each Player Terminal for the purpose of storing and preserving a redundant set of critical data which has been error checked in accordance with the Act, and which data shall include, at a minimum, the following Player Terminal information:

(A) electronic meters required in the Act;

(B) recall of all wagers and other information associated with the last ten (10) plays, and

(C) error conditions that may have occurred on the Player Terminal;

(5) An on/off switch that controls the electrical current that supplies power to the Player Terminal, which must be located in a secure place that is readily accessible within the interior of the Player Terminal;

(6) The operation of each Player Terminal must not be adversely compromised or affected by static discharge, liquid spills, or electromagnetic interference;

(7) A Player Terminal must have electronic accounting meters which have tally totals to a minimum of seven (7) digits and be capable of rolling over when the maximum value of at least 9,999,999 is reached. The Player Terminal must provide a means for on-demand display of the electronic meters via a key switch or other secure method on the exterior of the machine. Electronic meters on each Player Terminal for each of the following data categories are required:

(A) credits, or equivalent monetary units, deposited on a cumulative basis on that Player Terminal,

(B) if a Player Terminal offers more than one Electronic Bonanza-Style Bingo Game or Electronic Amusement Game for play, then for each game, the meter shall record the number of credits, or equivalent monetary units, wagered and won for each game,

(C) hand-paid and progressive jackpots paid for that Player Terminal, which must include the cumulative amounts paid by an attendant for any such jackpot not otherwise metered pursuant to subparagraph (b) of these rules.

(D) the number of games played on the Player Terminal, and

(E) the number of times the cabinet door is opened or accessed;

(8) Under no circumstances shall the Player Terminal electronic accounting meters be capable of being automatically reset or cleared, whether due to an error in any aspect of its or a game's operation or otherwise. All meter readings must be recorded and dated both before and after an electronic accounting meter is cleared;

(9) At a minimum, each Player Terminal shall have the following game information available for display on the video screen and/or displayed on the Player Terminal itself, in a location conspicuous to the player:

(A) the rules of the game being played,

(B) the maximum and minimum cost of a wager, purchase or play activation and the amount of credits, or cash equivalents, which may be won for each game offered through that Player Terminal,

(C) the player's credit balance,

(D) the outcome of the game then being played, and

(E) any prize won on the game then being played;

(10) The video screen or other means for displaying game rules, outcomes and other game information shall be kept under a glass or other transparent substance which places a barrier between the player and the actual surface of the display. At no time may stickers or other removable media be placed on the Player Terminal's face for purposes of displaying rules or payouts;

(11) No hardware switches may be installed on a Player Terminal or any associated equipment which may affect the outcome or payout of any game for which the Player Terminal is used. Switches may be installed to control the ergonomics of the Player Terminal; and

(12) Where the system or Components are linked with one another in a local network for progressive jackpot, function sharing, aggregate prizes or other purposes, communication protocols must be used which ensure that erroneous data or signals will not adversely affect the operations of any such system or Components.

325:85-15-3. General Player Terminal requirements

For Player Terminals connected to a game server, the following Standards shall apply:

(1) The game server shall generate and transmit to the bank of Player Terminals a set of random numbers, color and/or symbols, some of which are drawn prior to the sale of bingo cards. The subsequent game results are determined at the Player Terminal and the resulting information is transmitted to the account server.

(2) The game servers shall be housed in a game server room or secure locked cabinet outside of the Player Terminal.

(3)The following are the Bonanza-Style Bingo Game Server requirements for ball drawing:

(A) The balls shall be drawn via an approved electronic RNG certified for use in the game of Bingo or be drawn by an approved Mechanical RNG (such as a ball blower);

(B) The Racetrack Gaming Operator Licensee shall have no discretion over which balls are drawn; and

(C) The Game Server shall have the ability to pre-draw and transmit the drawn balls to the individual Player Terminals prior to the sale of cards for that game, provided that it is understood that not all balls need to be pre-drawn.

325:85-15-4. Terminal security

The Player Terminal must be able to withstand forced entry, unless such entry causes an error condition.

325:85-15-8. Player Terminal identification

(a) A Player Terminal shall have an identification badge, designed to be non-removable, affixed to the exterior of the cabinet by the Manufacturer, and this badge shall include information sufficient to allow the Commission to determine the following:

(1) The Manufacturer;

(2) The Player Terminal's unique serial number;

(3) The Player Terminal model number; and

(4) The date of manufacture.

(b) The Commission may also affix to each Player Terminal on the premises a Commission identification tag.

325:85-15-9. Tower light

The Player Terminal shall have a light located conspicuously on top that automatically illuminates when a player has won an amount or is redeeming credits that the Player Terminal cannot automatically pay, or an error condition has occurred (including 'Door Open'), or a 'Call Attendant' condition has been initiated by the player An audible alarm may be substituted for this requirement.

325:85-15-10. Power surges

The Player Terminal shall not be adversely affected by surges or dips of ± 20% of the supply voltage other than resets that do not result in damage to the equipment or loss or corruption of data.

325:85-15-11. Coin diverter

For games that accept coins or tokens, the Player Terminal must use a coin 'Diverter' that directs coins to the hopper, or to the drop box when the hopper is full. The hopper full detector shall be monitored by the control program to determine whether a change in Diverter status is required. If the state of the detector changes, the Diverter shall operate as soon as possible, or within ten games, after the state change, without causing a disruption of coin flow, or creating a coin jam. Hopperless Player Terminals shall always divert coins to the drop box.

325:85-15-12. Drop box

If the game is equipped to accept coins or tokens, then the following rules must be met:

(1) Each Player Terminal equipped to accept coins or tokens shall contain a separate drop bucket or drop box to collect and retain all such coins or tokens that are diverted into the drop box;

(2) A drop bucket shall be housed in a locked compartment separate from any other compartment of the Player Terminal; and

(3) There must be a method to monitor the drop box area, even if manufactured by a different company.

325:85-15-13. External doors/compartments

The following requirements shall apply to the Player Terminal's external doors:

(1) Doors shall be manufactured of materials that are suitable for allowing only legitimate access to the inside of the cabinet. That is, doors and their associated hinges shall be capable of withstanding determined illegal efforts

to gain access to the inside of the Player Terminal and shall leave evidence of tampering if an illegal entry is made;

(2) All external doors shall be locked and monitored by door access sensors, which shall detect and report all external door openings, both to the Player Terminal by the way of an error and to an on-line system. The drop box door open does not have to cease game play; however, it must still illuminate the tower light or alarm and notify the on-line system;

(3) It shall not be possible to insert a device into the Player Terminal that will disable a door open sensor when the machine's door is closed, without leaving evidence of tampering; and

(4) The sensor system shall register a door as being open when the door is moved from its fully closed and locked position.

325:85-15-14. Logic compartment

The logic compartment is a locked cabinet area(s) with its own locked door - which houses critical electronic components that have the potential to significantly influence the operation of the Player Terminal. There may be more than one such logic compartment in a Player Terminal.

(1) CPUs and other electronic Components involved in the operation and calculation or display of game play (e.g., game controller electronics and Components housing the game or system firmware program storage media) must be housed in a logic component.

(2) Communication controller electronics, and Components housing the communication program storage media or the communication board for the on-line system, need not be housed in a logic compartment and may reside outside the Player Terminal.

(3) The logic compartment(s) shall be locked with a separate key kept by a Gaming Agent. A Gaming Agent must be personally present any time a logic compartment is opened, and only the Gaming Agent may insert and use the logic compartment key.

325:85-15-15. Coin and currency compartments

The coin and currency compartments shall be locked separately from the main cabinet area, except that a separate cash compartment shall not be required for coins necessary to pay prizes in a Player Terminal that pays prizes through a drop hopper. Coin and currency compartments must also meet the following requirements:

(1) Access to the currency storage area shall be secured via separate key locks and shall be fitted with sensors that report to an on-line system that the door has opened/closed or the bill stacker has been removed.

(2) Access to the currency storage area shall be through two levels of locks, the relevant outer door plus one other door or lock, before the receptacle or currency can be removed.

325:85-15-16. Function of a Random Access Memory (RAM) Clear

Following the initiation of a RAM reset procedure (using a certified RAM Clear method), the game program shall execute a routine, which initializes each and every bit in RAM to the default state. For games that allow for partial RAM clears, the methodology in doing so must be accurate and the game must validate the un-cleared portions of RAM. The default reel position or game display after a RAM reset shall not be the top award on any selectable line. The default game display, upon entering game play mode, shall also not be the top award. This applies to the base game only and not any secondary bonus devices.

325:85-15-17. Configuration setting

It shall not be possible to change a configuration setting that causes an obstruction to the electronic accounting meters without a RAM Clear. Any such change must be done by a secure means, which includes access to the locked logic compartment.

325:85-15-18. Critical memory defined

Critical memory is used to store all data that is considered vital to the continued operation of the Player Terminal. This includes, but is not limited to:

(1) All electronic meters required in 'Electronic Metering within the Player Terminal,' including last bill data and power up and door open metering;

(2) Current credits;

(3) Player Terminal/game configuration data;

(4) Information pertaining to the last ten plays with the Random Number Generator outcome, including the current game, if incomplete; and

(5) Software state, the last normal state the Player Terminal software was in before interruption.

325:85-15-19. Critical memory integrity

Comprehensive checks of Critical Memory shall be made during each Player Terminal restart such as power-up cycle. The Player Terminal control program shall test for possible corruption of Critical Memory. Test methodology shall detect 99.99 percent of all possible failures. In addition, all Critical Memory (Non-Volatile) shall:

(1) Have the ability to retain data for a minimum of thirty days after power is discontinued from the machine.

(2) Only be cleared by accessing the locked logic compartment in which it's housed;

(3) Result in a RAM Error if the control program detects an unrecoverable memory error; and

(4) The RAM should not be cleared automatically, but shall require a full RAM clear (RAM Reset) performed by an authorized Person.

325:85-15-20. Program Storage Devices

All Program Storage Devices, including EPROMs, DVD, CD-ROM, Compact Flash and any other type of Program Storage Devices, shall be clearly marked with sufficient information to identify the software and revision level of the information stored in the devices and shall only be accessible with access to the locked logic compartment.

325:85-15-21. Write Once (Non-Writable) Program Storage

For Program Storage Devices that are written to once (i.e., EPROM, CD), the following requirements shall be met:

(1) CD-ROM specific based Program Storage Devices shall:

(A) Not be a re-writeable disk; and

(B) The "Session" shall be closed to prevent any further writing.

(2) Non-EPROM specific (including CD-ROM) Program Storage Devices shall meet the following requirements:

(A) The control program shall authenticate all critical files by employing a Hashing Algorithm which produces a 'Message Digest' output of at least 128 bits at minimum, as certified by the Independent Testing Laboratory. The Message Digest(s) shall be stored on a memory device (ROM-based or other medium) within the Player Terminal. Message Digests which reside on any other medium shall be encrypted, using a public/private key Algorithm with a minimum of a 512 bit key.

(B) The Player Terminal shall authenticate all critical files against the stored Message Digest(s), as required in (i), above. In the event of a failed authentication after the game has been powered up, the Player Terminal should immediately enter an error condition with the appropriate tower light signal and record the details including time and date of the error in a log. This error shall require operator intervention to clear. The game shall display specific error information and shall not clear until either the file authenticates properly, following the operator intervention, or the medium is replaced or corrected, and the device's memory is cleared, the game is restarted, and all files authenticate correctly.

325:85-15-22. Writable Program Storage

This section applies to Player Terminals where the control program is capable of being erased and re-programmed without being removed from the Player Terminal, bill acceptor or other equipment or related device, which shall meet the following requirements:

(1) Re-programmable Program Storage Devices shall only write to alterable storage media containing data, files, and programs that are not critical to the basic operation of the game, such as marketing information. Notwithstanding the foregoing, such device may write to media containing critical data, files, and programs provided that:

(A) A log of all information that is added, deleted, and modified be stored on the media;

(B) Verifies the validity of all data, files, and programs which reside on the media using the methods listed in the Non-EPROM Specific requirements;

(C) Contains appropriate security to prevent unauthorized Modifications;

(D) Does not allow game play while the media containing the critical data, files, and programs is in a modifiable state; and

(2) Downloadable software shall not be used until specifically authorized by Commission Rule.

325:85-15-23. Integrity of the Control Program

The control program shall ensure the integrity of all critical program Components during the execution of said Components and the first time the files are loaded for use, even if only partially loaded. RAM and PSD (Program Storage Device) space that is not critical to machine security (e.g., video or sound ROM) is nevertheless required to be validated. If any of the video or sound files contain payout amounts or other information needed by the player, the files or program storage must have a secure method of verification.

325:85-15-24. Multi-station games

A multi-station game is a gaming device that incorporates more than one Player Terminal which may be controlled by a master terminal. The master terminal, containing the game's CPU, will house the game display, which is shared among the Player Terminals. Each station must meet the technical standards outlined throughout these Rules, including Player Terminal identification and metering.

325:85-15-25. Circuit board identification

(a) Each printed circuit board shall be identifiable by some sort of name (or number) and revision level;

(b) The top assembly revision level of the printed circuit board shall be identifiable. If track cuts and/or patch wires are added to the printed circuit board, then a new revision number or level must be assigned to the assembly; and

(c) Manufacturers shall ensure that circuit board assemblies, used in their Player Terminals, conform functionally to the documentation and the certified versions of those printed circuit boards that were evaluated and certified by the Independent Testing Laboratory.

325:85-15-26. Mechanical devices used for displaying game outcomes

Electro-mechanically controlled display devices, such as reels or wheels, shall have a sufficiently closed loop of control so as to enable the software to detect a malfunction, or an attempt to interfere with the correct operation of that device. If a reel or wheel is not in the position it is supposed to be in, an error condition must be generated and reported to the on-line system;.

325:85-15-27. Video monitors/touchscreens

Touch screens requiring calibration must be able to be re-calibrated by venue staff without access to the Player Terminal cabinet other than opening the main door. There shall be no hidden or undocumented buttons/touch points anywhere on a touch screen that affect game play, except as provided for by the game rules.

325:85-15-28. Coin or token acceptors

(a) If the Player Terminal uses a coin acceptor, the acceptor shall be reasonably designed to accept or reject a coin on the basis of metal composition, mass, composite makeup, or equivalent security. In addition, the coin acceptor shall be reasonably designed to prevent the use of cheating methods such as slugging (counterfeit coins), stringing (coin pullback), the insertion of foreign objects and other manipulation.

(b) Acceptance of coins for crediting to the credit meter shall only be possible when the Player Terminal is enabled for play. Other states, such as error conditions, including door opens, audit mode and game play, shall cause the disabling of the coin acceptor system.

325:85-15-29. Bill acceptors

All acceptance devices shall be reasonably designed to detect the entry of valid bills, coupons, ticket vouchers, or other approved notes, if applicable, and provide a method to enable the Player Terminal software to interpret and act appropriately upon a valid or invalid input. In addition, bill acceptor devices(s) shall only register credits when the bill or other note has passed the point where it is accepted and stacked; and the acceptor has sent the "irrevocably stacked" message to the machine.

325:85-15-33. Accountability of bills/tickets or other items accepted

A Player Terminal which contains a bill acceptor device shall maintain sufficient electronic metering to be able to report the following:

(1) Total monetary value of all items accepted;

(2) Total number of all items accepted; and

(3) A breakdown of the items accepted, as follows:

(A) For bills, the game shall report the number of bills accepted for each bill denomination;

(B) For all other notes, the game shall have a separate meter that reports the number of notes accepted, not including bills.

325:85-15-34. Bill acceptor recall

A Player Terminal that uses a bill acceptor shall retain in its memory and display the denomination of the last five items accepted by the bill acceptor, including, for example, U.S. currency, ticket vouchers and coupons.

325:85-15-35. Bill acceptor error conditions

Each Player Terminal and/or bill acceptor shall have the capability of detecting and displaying an error condition, for the conditions below. It is acceptable for the bill acceptor to disable or flash a light or lights to indicate the error has occurred, provided the information is communicated to the Player Terminal and the bill acceptor disables:

(1) Bill Stacker Full;

(2) Bill Jams;

(3) Bill Acceptor Door Open - where a Bill Acceptor door is the belly glass door, a door open signal is sufficient; and

(4) Bill Stacker Door Open or Bill Stacker Removed.

325:85-15-36. Bill acceptor stacker requirements

Each bill acceptor shall have a secure bill stacker and items accepted by the bill acceptor shall be deposited into the secure stacker. The secure bill stacker shall be attached to the Player Terminal in such a manner so that it cannot be easily removed by physical force and shall meet the following requirements:

(1) The bill acceptor device shall have a 'stacker full' sensor;

(2) There shall be a separate key to access the bill stacker area. This key shall be separate from the main door. In addition, a separate key shall be required to remove the bills from the bill stacker; and

(3) A tower light or alarm shall be activated whenever there is access to the bill door or the stacker has been removed.

325:85-15-39. Hoppers & hopper error conditions

(a) For hopper games, there shall not be an abnormal payout when the hopper is exposed to higher levels of electro-static discharge or if power is lost at any time during a payout. The hopper shall be interfaced in such a way as to allow the Player Terminal control program to monitor the hopper mechanism in all game states, to identify the following events and lock up the game in an error condition, requiring attendant intervention, when the following occur:

(1) Extra coin paid;

(2) Hopper jam or empty.

(b) The hopper shall be resistant to manipulation by the insertion of a light source or any foreign object.

325:85-15-40. Payment by ticket printers

(a) If the Player Terminal has a printer that is used to make payments, the printer shall be located in a locked area of the Player Terminal, which requires opening of the main door to access, but the printer shall not be located in the logic compartment or the drop box.

(b) The Player Terminal, in which the printer is housed shall be linked to a ticket validation system, which records the ticket information. Validation approval or information shall come from the ticket validation system in order to validate tickets. Tickets may be validated at any location, as long as it meets the standards within this section.

(c) Each Player Terminal shall be designed so that if communication is lost, and validation information cannot be sent to the ticket validation system, there is an alternate method of payment. The validation system must be able to identify duplicate tickets, to prevent fraud.

(d) The printer shall print on a ticket and must provide the ticket data to a ticket validation system that records the following information regarding each payout ticket printed:

(1) Value of credits in local monetary units in numerical form;

(2) Time of day the ticket was printed in twenty-four hour format showing hours and minutes - printing of this information is not required, provided that storage of this information is retained in the database;

(3) Date, in any recognized format, indicating the day, month, and year;

(4) Player Terminal number or machine number; and

(5) Unique validation number, or barcode.

(e) If the taxation limit is reached on any single play when using a ticket printer, then the ticket must not be able to be redeemed at any place other than through human interaction - not on another machine or at a self-serve kiosk.

(f) The Player Terminal shall either keep a duplicate copy or print only one copy to the player but have the ability to retain the ticket-out information within the cashless transaction log, to resolve player disputes. In addition, an approved ticket validation system shall be used to validate the payout ticket, and the ticket information on the system shall be retained at least as long as the ticket is valid at that location.

(g) A printer shall have mechanisms to allow the Player Terminal to interpret and act upon the following conditions. Such conditions must disable the game, and produce an error condition, requiring attendant intervention to resume play:

(1) Out of paper/paper low (It is not necessary to lock up a game during a 'Paper Low' condition.);

(2) Printer jam/failure; and

(3) Printer disconnected. (It is permissible for the Player Terminal to detect this error condition when the game tries to print.)

325:85-15-42. Credit meter

The credit meter shall be maintained in credits or cash value.

325:85-15-43. Electronic accounting and occurrence meters

The required electronic meters are as follows (accounting meters are designated with an asterisk *).

(1) The Amounts Wagered* (OR cash in) meter shall cumulatively count the total amounts wagered during game play, except credits that are won during the game that are subsequently risked in a double-up mode.

(2) The Amounts Won* (OR credit out) meter shall cumulatively count all amounts won by the player at the end of the game that were not paid by an Attendant, including amounts paid by a ticket printer. This meter must not increment for bills inserted and cashed out (used as a change machine).

(3) The drop* meter shall maintain a cumulative count of the number of coins that have been diverted into a drop bucket and credit value of all bills and tickets/coupons inserted into the Bill Acceptor for play. NOTE: It is acceptable to have separate 'drop' meters for coins, bills, tickets, and coupons.

(4) The handpays* meter shall reflect the cumulative amounts paid by an Attendant for progressive and non-progressive wins.

(5) The games-played meter shall display the cumulative number of games played since the last RAM clear.

(6) A cabinet door meter shall display the number of times the front cabinet door was opened since the last RAM clear.

(7) The drop door meter shall display the number of times the drop door and the Bill Acceptor door was opened since the last RAM clear.

(8) The cancelled credit* meter shall reflect the cumulative amounts paid by an Attendant that are in excess of the credit limit and residual credits that are collected. NOTE: Printer games do not require a cancelled credit meter unless a 'printer limit' option exists on the game.

(9) The progressive occurrence meter shall count the number of times each progressive meter is activated.

325:85-15-44. Multi-game game specific meters

In addition to the electronic accounting meters required above, each individual game available for play shall have at least "Amount Bet" and 'Amount Won" meters in either credits or dollars. Even if a 'doubleup or gamble' game is lost, the initial win amount/credits bet amount shall be recorded in the game specific meters. Alternatively, there can be separate meters that account for the double-up or gamble information. Either way, the method of metering must be understood on the screen.

325:85-15-45. Double-up or gamble meters

For each type of double-up or gamble offered, there shall be two meters to indicate the amount doubled and the amount won, which should increment every time a double -up or gamble occurs. If the Player Terminal does not supply accounting for the double -up or gamble information, the feature must not be enabled for use.

325:85-15-46. Cashless transaction log

All Player Terminals must have the capacity to display a complete transaction history for the most recent transaction with a cashless wagering system (this would include tickets, coupons, electronically transferred promotional and/or bonusing credits, etc.), and the previous ten (10) transactions prior to the most recent transaction that incremented any of the accounting meters.

325:85-15-47. Error conditions

Player Terminals shall be capable of detecting and displaying the following error conditions and illuminate the tower light for each or sound an audible alarm. They shall be cleared either by an attendant or upon initiation of a new play sequence and be communicated to an on-line monitoring and control system, if applicable:

(1) Coin-in jam;
(2) Coin-out jam;
(3) Hopper empty or timed out;
(4) Hopper runaway or extra coin paid out;
(5) RAM error;
(6) Low RAM battery, for batteries external to the RAM itself or low power source;
(7) Currency-in jam;
(8) Program error or authentication mismatch;
(9) Door open (including bill acceptor);
(10) Reverse Coin-in (coin traveling wrong way through acceptor);
(11) Reel spin errors, including a mis-index condition for rotating reels, that affect the outcome of the game:
(A) The specific reel number shall be identified in the error code;
(B) In the final positioning of the reel, if the position error exceeds one-half of the width of the smallest symbol excluding blanks on the reel strip; and
(C) Microprocessor-controlled reels shall be monitored to detect malfunctions such as a reel which is jammed, or is not spinning freely, or any attempt to manipulate their final resting position.
(12) Power reset;
(13) Any credits on the Player Terminal that are attempted to be transferred to the host system that result in a communication failure for which this is the only available payout medium (the patron cannot cashout via hopper or ticket printer) must result in a hand-pay lockup or tilt on the Player Terminal.

325:85-15-48. Game interruption and resumption

After a program interruption (e.g., power down), the software shall be able to recover to the state it was in immediately prior to the interruption occurring and:

(1) If a Player Terminal is powered down while in an error condition, then upon restoring power, the error message shall be displayed and the Player Terminal shall remain locked-up. This is unless power-down is used as part of the error reset procedure, or if on power-up or door closure, the Player Terminal checks for the error condition and detects that the error is no longer in existence.
(2) Upon program resumption, the following procedures shall be performed as a minimum requirement:
(A) Any communications to an external device shall not begin until the program resumption routine, including self-tests, is completed successfully;
(B) Player Terminal control programs shall test themselves for possible corruption due to failure of the program storage media;
(C) The integrity of all critical memory shall be checked; and
(D) Games utilizing microprocessor-controlled mechanical displays (e.g., reels or wheels) shall re-spin automatically to display the last valid game's result when the play mode is re entered, and the reel positions have been altered.

325:85-15-49. Door open events

When the Player Terminal's main door is opened, the game shall cease play, enter an error condition, display an appropriate error message, disable coin acceptance and bill acceptance, and either sound an alarm or illuminate the tower light or both. When the Player Terminal's main door is closed, the game shall return to its original state and display an appropriate error message, until the next game has ended. The software shall be able to detect any meter access to the following doors or secure areas:

(1) All external doors;
(2) Drop box door;
(3) Bill acceptor door.

325:85-15-50. RNG requirements

Where the authorized game or system uses a RNG to make selections, such RNG and the selections shall:

(1) Be statistically independent.
(2) Conform to the desired random distribution.
(3) Pass various recognized statistical tests.
(4) Be unpredictable.
(5) Be cycled continuously in the background between games and during game play at a speed that cannot be timed by the player.
(6) Randomly determine the first seed by an uncontrolled event. After every game, there shall be a random change in the RNG process (new seed, random timer, delay, etc.). This will verify the RNG does not start at the same value, every time. It is permissible not to use a random seed; however, the Manufacturer must ensure that the games will not synchronize.
(7) If a random number with a range shorter than that provided by the RNG is required for some purpose within the Player Terminal, the method of re-scaling, (i.e., converting the number to the lower range) is to be designed in such a way that all numbers within the lower range are equally probable.
(8) If a particular random number selected is outside the range of equal distribution of rescaling values, it is permissible to discard that random number and select the next in sequence for the purpose of re-scaling.
(9) Unless otherwise denoted on the payglass, where the Player Terminal plays a game that is recognizable such as electronic card games, the same probabilities associated with the live game shall be evident in the simulated game. For example, the odds of drawing a specific card or cards in an electronic card game shall be the same in the live game as if a physical deck of cards were being used. Card games also must meet the following:

(A) Cards once removed from the deck shall not be returned to the deck except as provided by the rules of the game depicted; and

(B) As cards are removed from the deck, they shall be immediately used as directed by the rules of the game (i.e., the cards are not to be discarded due to adaptive behavior by the Player Terminal).

(10) Mechanical-based RNG games are games that use the laws of physics to generate the outcome of the game. All mechanical-based RNG games must meet the requirements of these Rules with the exception of the requirement stated above that dictate the requirements for electronic RNGs.

(11) Each possible permutation or combination of game elements that produces winning or losing game outcomes shall be available for random selection at the initiation of each play, unless otherwise denoted by the game.

(12) A Player Terminal shall use appropriate communication protocols to protect the RNG and random selection process from influence by associated equipment, which may be communicating with the Player Terminal.

325:85-15-51. Required notice of average theoretical percentage payout

Although the specifications for Authorized Games do not specify a minimum percentage payout requirement, the Independent Testing Laboratory, when testing the prototype for each game, shall determine the theoretical payout minimum during the expected life for each game. The Independent Testing Laboratory report shall inform the Commission and Racetrack Gaming Operator Licensee of the theoretical minimum payout of each game tested. Using the theoretical minimum payout provided for each game, the Racetrack Gaming Operator Licensee shall determine the average theoretical payout for each game installed at its Gaming Facility. The Racetrack Gaming Operator Licensee shall submit all such payout information, including the material assumptions used in the preparation of the payouts, to the Commission where such information shall be made available to the public at the Commission office.

325:85-15-52. Bonus games

If the game contains a 'bonus feature' including a game within a game, the following requirements shall be met:

(1) The game shall display clearly to the player which game rules apply to the current game state;

(2) Each game which offers free games during game play (i.e., "fever" mode - a mode which gives the player an opportunity for the following 'X' number of hands to achieve a certain winning combination with the pay-off being some number of bonus credits) should include the number of hands remaining for the free game event(s) as each free game is played;

(3) The game, other than those that occur randomly, shall display to the player sufficient information to indicate the current status towards the triggering of the next bonus game (i.e., if the game requires obtaining several events/symbols towards a feature, the number of events/symbols needed to trigger the bonus shall be indicated along with the number of events/symbols collected at any point);

(4) The game shall not adjust the likelihood of a bonus occurring, based on the history of prizes obtained in previous games (i.e., games shall not adapt their theoretical return to player based on past payouts);

(5) If a bonus or feature game requires extra credits to be wagered and the game accumulates all winnings (from the trigger and the feature) to a temporary "win" meter (rather than directly to the credit meter), the game shall:

(A) Provide a means where winnings on the temporary meter can be bet (via the credit meter) to allow for instances where the player has an insufficient credit meter balance to complete the feature;

(B) Transfer all credits on the temporary meter to the credit meter upon completion of the feature;

(C) Not exceed the max bet limit, if one is set; and

(D) Provide the player an opportunity NOT to participate.

(6) If a game's bonus is triggered after accruing a certain number of events/symbols or combination of events/symbols of a different kind, the probability of obtaining like events/symbols shall not deteriorate as the game progresses (e.g., for identical events/symbols it is not permitted that the last few events/symbols needed are more difficult to obtain than the previous events/symbols of that kind);

(7) The game shall make it reasonably clear to the player that they are in this mode to avoid the possibility of the player walking away from the Player Terminal not knowing the game is in a bonus mode.

325:85-15-53. Multi-line games

Each individual line to be played shall be clearly indicated by the Player Terminal so that the player can reasonably determine which lines are being bet on. In addition, the winning playline(s) shall be reasonably discernable to the player.

325:85-15-54. Multiple games offered for play at one Player Terminal

The following requirements apply to Player Terminals that offer more than one (1) game to be played:

(1) The methodology employed by a player to select and discard a particular game for play on a multi-game Player Terminal shall be clearly explained to the player on the Player Terminal, and be easily followed.

(2) The Player Terminal shall be able to clearly inform the player of all games, their rules and/or the paytables before the player must commit to playing them.

(3) The player shall at all times be made aware of which game has been selected for play and is being played, as applicable.

(4) The player shall not be forced to play a game just by selecting that game. The player shall be able to return to the main menu.

(5) It should not be possible to start a new game before the current play is completed and all relevant meters have been updated (including features, gamble and other options of the game) unless the action to start a new game terminates the current play in an orderly manner.
(6) The set of games offered to the player for selection, or the paytable, can be changed only by a secure certified method which includes turning on and off games available for play through a video screen interface. The requirements outlined in 'Configuration Setting' of these Rules shall govern the RAM Clear control requirements for these types of selections. However, for games that keep the previous paytable's (the paytable just turned off) data in memory, a RAM clear is not required.
(7) No changes to the set of games offered to the player for selection (or to the paytable) are permitted while there are credits on the player's credit meter or while a game is in progress.

325:85-15-55. Taxation reporting limits

The game shall be capable of entering a lock-up condition if the sum of awards from a single game is equal to the 'Taxation Limit' and which requires an Attendant to clear (currently $1,200 per IRS limits).

325:85-15-56. Test/diagnostic mode (demo mode)

If in a test mode the game shall clearly indicate that it is in a test mode, not normal play, and:
(1) Any test that incorporates credits entering or leaving the Player Terminal (e.g., a hopper test) shall be completed on resumption of normal operation;
(2) There shall not be any test mode that increments any of the electronic meters (test meters are permissible provided the meter indicates as such);
(3) Any credits on the Player Terminal that were accrued during the test mode shall be cleared before the test mode is exited;
(4) The main cabinet door of the Player Terminal may automatically place the Player Terminal in a service or test-mode or may also be entered, via an appropriate instruction, from an attendant during an audit mode access; and
(5) When exiting from test mode, the game shall return to the original state it was in when the test mode was entered.

325:85-15-57. Number of last plays required

Information on at least the last ten games is to always be retrievable on the operation of a suitable external key-switch, or another secure method that is not available to the player. Last play information shall provide all information required to fully reconstruct the last ten plays. All values shall be displayed, including the initial credits, credits bet, credits won, and credits paid. If a progressive was awarded, it is sufficient to indicate the progressive was awarded and not display the value. This information should include the final game outcome, including all player choices and bonus features. The results of double-up or gamble, if applicable, should also be included. The last game recall shall reflect bonus rounds in their entirety. If a bonus round lasts 'x number of events,' each with separate outcomes, each of the 'x events' shall be displayed with its corresponding outcome if the outcome results in an award. The recall shall also reflect position-dependent events if the outcome results in an award. For games that may have infinite free games, there shall be a minimum of fifty games recallable.

325:85-15-58. Software verification

The device shall have the ability to allow for an independent integrity check of the device's software from an outside source. This must be accomplished by being authenticated by a third- party device, which may be embedded within the game software or having an interface port for a third-party device to authenticate the media. This integrity check will provide a means for field testing the software to identify and validate the program. The Independent Testing Laboratory, prior to device approval, shall approve the integrity check method. If the authentication program is contained within the game software, the Manufacturer must receive written approval from the Independent Testing Laboratory prior to submission.

325:85-15-59. Progressive prize management

Systems shall be permissible that allow progressive prize management.

325:85-15-60. Progressive meter/display

(a) A progressive meter/display can be one or more on-site progressive Player Terminal(s) that are linked, directly or indirectly, to a display, which may be a mechanical, electrical, or electronic device, including the video display that shows the payoff which increases in increments at a set rate of progression as credits are wagered.
(b) For games that have progressives such as 'Mystery Jackpot', the payoff does not have to be displayed to the player, although there should be an indication as to this type of feature on the game. All progressive meter displays shall be reasonably accurate and shall be reasonably visible to players.

325:85-15-61. Progressive Controllers

A Progressive Controller is all of the hardware and software that controls all communications among the devices that calculates the values of the progressives and displays the information within a progressive Player Terminal link (if applicable, progressive Player Terminal(s) may be internally controlled) and the associated progressive meter. This equipment includes but is not limited to PC-based computers, wiring, and collection nodes, etc. The method by which system jackpot parameter values are modified or entered shall be secure. Progressive Controllers shall:
(1) During the 'Normal Mode' of progressive Player Terminals, the Progressive Controller shall continuously monitor each device on the link for credits bet and shall multiply the same by the rate of progression and denomination in order to determine the correct amounts to apply

to the progressive jackpot. This shall be at leaset 99.99% accurate.

(2) The Progressive Controller or other approved progressive system Component shall keep the following information in non-volatile memory, which shall be displayed on demand:

(A) The number of progressive jackpots won on each progressive level if the progressive display has more than one winning amount;

(B) The cumulative amounts paid on each progressive level if the progressive display has more than one winning amount;

(C) The maximum amount of the progressive payout for each level displayed;

(D) The minimum amount of the progressive payout for each level displayed;

(E) The rate of progression for each level displayed.

(3) If the following events occur, the game that is using the progressive is to be disabled, and an error shall be displayed on the progressive meter, other approved progressive system Component or Player Terminal:

(A) During a communication failure;

(B) When there have been multiple communication errors;

(C) When a controller checksum or signature has failure;

(D) When a controller's RAM or PSD (Program Storage Device) mismatch or failure occurs;

(E) When the jackpot configuration is lost or is not set;

(4) The Progressive Controller shall have a secure means of transferring a progressive jackpot and/or prizes to another on-site Progressive Controller or other approved on-site progressive system Component. Transferring of progressive jackpots must meet the Commission's internal control procedures.

(5) There shall be a secure, two-way communication protocol between the main game processor board and progressive. In addition, the progressive system shall be able to:

(A) Send to the electronic Player Terminal the amount that was won for metering purposes; and

(B) Constantly update the progressive display as play on the link is continued.

(6) Each Progressive Controller used with a progressive Player Terminals shall be housed on-site in a secure environment allowing only authorized accessibility. Access to the controller must conform to the Commission's internal control procedures.

325:85-15-62. Linked Player Terminal odds

Each device on the link shall have the same probability of winning the progressive, adjusted for the denomination played. For instance, the probability shall remain the same for multiple denomination games, based on the monetary value of the wager.

325:85-15-63. Game cycle

A game is considered completed when the final transfer to the player's credit meter takes place (in case of a win), or when all credits wagered or won that have not been transferred to the credit meter are lost.

325:85-15-64. Periodic payments and merchandise prizes

Limitations on the prize amount (annuities, periodic payments, etc.) shall be clearly explained to the player. When merchandise is awarded as a prize, the value attributed to the merchandise by the Racetrack Gaming Operator Licensee shall be the true fair market value of the merchandise.

SUBCHAPTER 20. USE AND OPERATION REQUIREMENTS APPLICABLE TO COMPACT ELECTRONIC GAMES AND NON-COMPACT ELECTRONIC GAMES

325:85-20-1. Applicability

The Use and Operation Requirements set forth in this Subchapter 19 shall apply only to Compact Electronic Games and Non-Compact Electronic Games. The Use and Operation Requirements set forth in this Subchapter 19 shall not apply to Electronic Amusement Games, Electronic Bonanza-Style Bingo Games and Electronic Instant Bingo Games.

325:85-20-2. Terminal security

The Player Terminal must be able to withstand forced entry, unless such entry causes an error condition.

325:85-20-3. Player Terminal identification

(a) A Player Terminal shall have an identification badge, designed to be non-removable, affixed to the exterior of the cabinet by the Manufacturer, and this badge shall include information sufficient to allow the Commission to determine the following:

(1) The Manufacturer;

(2) The Player Terminal's unique serial number;

(3) The Player Terminal model number; and

(4) The date of manufacture.

(b) The Commission may also affix to each Player Terminal on the premises a Commission identification tag.

325:85-20-4. Power surges

The Player Terminal shall not be adversely affected by surges or dips of ± 20% of the supply voltage, other than resets that do not result in damage to the equipment or loss or corruption of data.

325:85-20-5. External doors/compartments

The following requirements shall apply to the Player Terminal's external doors:

(1) Doors shall be manufactured of materials that are suitable for allowing only legitimate access to the inside of the cabinet. That is, doors and their associated hinges shall be capable of withstanding determined illegal efforts to gain access to the inside of the Player Terminal and shall leave evidence of tampering if an illegal entry is made;
(2) All external doors shall be locked and monitored by door access sensors, which shall detect and report all external door openings, both to the Player Terminal by the way of an error and to an on-line system. The drop box door open does not have to cease game play; however, it must still illuminate the tower light or alarm and notify the on-line system;
(3) It shall not be possible to insert a device into the Player Terminal that will disable a door open sensor when the machine's door is closed, without leaving evidence of tampering,; and
(4) The sensor system shall register a door as being open when the door is moved from its fully closed and locked position.

325:85-20-6. Logic compartment

(a) The logic compartment is a locked cabinet area(s) with its own locked door - which houses critical electronic components that have the potential to significantly influence the operation of the Player Terminal. There may be more than one such logic compartment in a Player Terminal. CPUs and other electronic Components involved in the operation and calculation or display of game play (e.g., game controller electronics and Components housing the game or system firmware program storage media) must be housed in a logic component.
(b) Communication controller electronics, and Components housing the communication program storage media or the communication board for the on-line system, need not be housed in a logic compartment and may reside outside the Player Terminal.
(c) The logic compartment(s) shall be locked with a separate key kept by a Gaming Agent. A Gaming Agent must be personally present any time a logic compartment is opened, and only the Gaming Agent may insert and use the logic compartment key.

325:85-20-7. Coin or token acceptors

If the Player Terminal uses a coin acceptor, the acceptor shall be reasonably designed to accept or reject a coin on the basis of metal composition, mass, composite makeup, or equivalent security. In addition, the coin acceptor shall be reasonably designed to prevent the use of cheating methods such as slugging (counterfeit coins), stringing (coin pullback), the insertion of foreign objects and other manipulation. Acceptance of coins for crediting to the credit meter shall only be possible when the Player Terminal is enabled for play. Other states, such as error conditions, including door opens, audit mode and game play, shall cause the disabling of the coin acceptor system.

325:85-20-8. Bill acceptors

All acceptance devices shall be reasonably designed to detect the entry of valid bills, coupons, ticket vouchers, or other approved notes, if applicable, and provide a method to enable the Player Terminal software to interpret and act appropriately upon a valid or invalid input. In addition, bill acceptor devices(s) shall only register credits when: the bill or other note has passed the point where it is accepted and stacked; and the acceptor has sent the "irrevocably stacked" message to the machine.

325:85-20-9. Credit meter

The credit meter shall be maintained in credits or cash value in a manner that is accurate and not misleading to the player.

325:85-20-10. Door open events

When the Player Terminal's main door is opened, the game shall cease play, enter an error condition, display an appropriate error message, disable coin acceptance and bill acceptance, and either sound an alarm or illuminate the tower light or both. When the Player Terminal's main door is closed, the game shall return to its original state and display an appropriate error message, until the next game has ended. The software shall be able to detect any meter access to the following doors or secure areas:
(1) All external doors;
(2) Drop box door;
(3) Bill acceptor door.

325:85-20-11. Taxation reporting limits

The game shall be capable of entering a lock-up condition if the sum of awards from a single game is equal to the 'Taxation Limit' and which requires an Attendant to clear (currently $1,200 per IRS limits).

325:85-20-12. Progressive prize management

Systems shall be permissible that allow progressive prize management.

325:85-20-13. Periodic payments and merchandise prizes

Limitations on the prize amount (annuities, periodic payments, etc.) shall be clearly explained to the player. When merchandise is awarded as a prize, the value attributed to the merchandise by the Racetrack Gaming Operator Licensee shall be the true fair market value of the merchandise.

SUBCHAPTER 21. ACCOUNTING SYSTEM REQUIREMENTS

325:85-21-2. Electronic Accounting Systems

One or more on-site electronic accounting systems shall be required to perform reporting and other functions in support of the activities described in the Act. These systems may communicate with the other computers, Player Terminals and other game Components described in the Act using Standards set forth in the Act. The electronic accounting system shall not interfere with the outcome of any game functions.

325:85-21-6. Jackpot/fill functionality

(a) An electronic accounting system (EAS) must have an application or facility that accurately captures and processes every handpay message from each Player Terminal.

(b) For every single win event that is equal to or greater than the tax reporting threshold (established by the US Internal Revenue Service; currently $1,200), the EAS user must be advised of the need for a W2G or 10425 (required by the US Internal Revenue Service only) which is to be processed, either via the EAS or manually. This option must not be capable of being overridden.

325:85-21-8. EAS stored accounting meters

The EAS must collect and store the following meter information from each Player Terminal:

(1) Total In (credits-in);
(2) Total Out (credits-out);
(3) Total Dropped (coins-dropped or total value of all coins, bills and tickets dropped);
(4) Hand Paid (handpays);
(5) Cancelled Credits (if supported on Player Terminal);
(6) Bills In (total monetary value of all bills accepted);
(7) Individual Bill Meters (total number of each bill accepted per denomination);
(8) Games-Played;
(9) Cabinet Door (instance meter which may be based on EAS count of this event);
(10) Drop Door(s) (instance meter which may be based on EAS count of this event);
(11) Tickets In (total monetary value of all tickets accepted); and
(12) Tickets Out (total monetary value of all tickets produced).

325:85-21-9. EAS required reports

The EAS must generate, at a minimum, the following reports on a life-to-date basis and such other frequency as is required by the Executive Director:

(1) Net Win/Revenue Report for each Player Terminal;
(2) Drop Comparison Reports for each medium dropped (examples = coins, bills) with dollar and percent variances for each medium and aggregate for each type;
(3) Metered vs. Actual Jackpot Comparison Report with the dollar and percent variances for each and aggregate;
(4) Theoretical Hold vs. Actual Hold comparison with variances;
(5) Significant Event Log for each Player Terminal; and
(6) Other Reports, as required by the Commission Executive Director and the Office of the Oklahoma State Auditor and Inspector.

325:85-21-10. Security access control

The EAS shall not permit the alteration of any significant log information communicated from the Player Terminal. Additionally, there should be a provision for system administrator notification and user lockout or audit trail entry, after a set number of unsuccessful login attempts.

325:85-21-11. Data alteration

The EAS shall not permit the alteration of any accounting or significant event log information that was properly communicated from the Player Terminal without supervised access controls. In the event financial data are changed, an audit log must be capable of being produced to document:

(1) Data element altered;
(2) Data element value prior to alteration;
(3) Data element value after alteration;
(4) Time and date of alteration; and
(5) Personnel that performed alteration (user login).

325:85-21-12. System back-up

The EAS shall have sufficient redundancy and modularity so that if any single Component or part of a Component fails, gaming can continue. There shall be redundant copies of each log file or system database or both, with open support for backups and restoration.

325:85-21-13. Recovery requirements

In the event of a catastrophic failure when the EAS cannot be restarted in any other way, it shall be possible to reload the system from the last viable backup point and fully recover the contents of that backup, which must consist of at least the following information:

(1) Significant events;
(2) Accounting information;
(3) Auditing information; and
(4) Specific site information such as device file, employee file, progressive set-up, etc.

325:85-21-17. Ticket validation system - additional requirements

A ticket validation system may be entirely integrated into a EAS or exist as an entirely separate entity. Payment by ticket printer as a method of credit redemption on a Player Terminal is only permissible when the Player Terminal is linked to an approved ticket validation system. Validation information shall be communicated from the system to the Player Terminal using a secure communication protocol.

325:85-21-18. Ticket information

A ticket shall contain the following printed information at a minimum:

(1) Casino Name/Site Identifier;

(2) Machine Number (or Cashier/Change Booth location number or equivalent context, if ticket creation, outside the Player Terminal, is supported);

(3) Date and time;

(4) Alpha and numeric dollar amount of the ticket;

(5) Ticket sequence number;

(6) Validation number;

(7) Bar code or any machine readable code representing the validation number;

(8) Type of transaction or other method or differentiating ticket types (assuming multiple ticket types are available); and

(9) Indication of an expiration period from date of issue, or date and time the ticket will expire.

325:85-21-19. Ticket types

If Player Terminal ticket generation is to be supported while not connected to the validation system, a ticket system must generate two different types of tickets at minimum. On-line and off- line types are denoted respectively by ticket generation either when the validation system and Player Terminal are properly communicating or the validation system and Player Terminal are not communicating properly. When a patron cashes out of a Player Terminal that has lost communication with the validation system, the Player Terminal must lock up and, after reset, may print an off-line ticket or handpay receipt. The ticket or handpay receipt must be visually distinct from an on-line ticket either in format or content while still maintaining all information required.

325:85-21-21. Ticket redemption

Tickets may be inserted in any Player Terminal participating in the validation system providing that no credits are issued to the Player Terminal prior to confirmation of ticket validity. The customer may also redeem a ticket at a validation terminal (i.e., cashier/change booth, redemption terminal or other approved methods). All validation terminals shall be user and password-controlled.

325:85-21-22. Invalid ticket notification

The ticket validation system must have the ability to identify invalid tickets and notify the Player Terminal to 'Reject' the ticket or advise the cashier that one of the following conditions exists:

(1) Ticket cannot be found on file (stale date, forgery, etc.);

(2) Ticket has already been paid; or

(3) Amount of ticket differs from amount on file (requirement can be met by display of ticket amount for confirmation by cashier during the redemption process).

325:85-21-23. Offline ticket redemption

If the on-line data system temporarily goes down and validation information cannot be sent to the validation system, an alternate method of payment must be provided either by the validation system possessing unique features (e.g., validity checking of ticket information in conjunction with a local database storage) to identify duplicate tickets and prevent fraud by reprinting and redeeming a ticket that was previously issued by the Player Terminal; or by use of an approved alternative method as designated by the regulatory jurisdiction that will accomplish the same.

325:85-21-24. Required reports

The following reports shall be generated at a minimum and reconciled with all validated/redeemed tickets:

(1) Ticket Issuance Report;

(2) Ticket Redemption Report;

(3) Ticket Liability Report;

(4) Ticket Drop Variance Report;

(5) Transaction Detail Report must be available from the validation system that shows all tickets generated by a Player Terminal and all tickets redeemed by the validation terminal or other Player Terminal; and

(6) Cashier Report, which is to detail individual tickets, the sum of the tickets paid by cashier/change booth or redemption terminal.

325:85-21-25. Security of ticket information

Once the validation information is stored in the database, the data may not be altered in any way. The validation system database must be encrypted or password-protected and should possess a non-alterable user audit trail to prevent unauthorized access. Further, the normal operation of any device that holds ticket information shall not have any options or methods that may compromise ticket information. Any device that holds ticket information in its memory shall not allow removing of the information unless it has first transferred that information to the database or other secured Component(s) of the validation system.

325:85-21-26. General standards for redemption kiosks

Redemption kiosks shall meet the Player Terminal standards and use requirements in these Rules, including the memory and communication requirements. In addition, kiosks are required to have an interface to the ticket validation system.

325:85-21-27. Redemption kiosk error conditions

(a) The redemption kiosk must be capable of detecting and displaying the following error conditions. The error condition must illuminate the tower light or sound an audible alarm. This requirement may be substituted for a notification system that alerts casino staff of error conditions. The redemption kiosk shall be able to recover to the state it was in immediately prior to the interruption occurring, including during payment. Error conditions not requiring attendant intervention are A, B, H, I,

J, and K. Error conditions requiring attendant intervention are C, D, E, F, G, and L.

(1) Power loss or power reset;

(2) System and kiosk not communicating, which non-communication may be detected upon ticket insertion only;

(3) Coin or currency out error;

(4) Coin hopper or cash dispenser empty or timed out. This condition does not require immediate intervention if alternate method of payment is available.

(5) RAM error (critical memory);

(6) Low RAM battery (if battery external to the RAM itself used);

(7) Ticket voucher-in jam;

(8) Door open (all external doors);

(9) Bill acceptor stacker full;

(10) Bill acceptor door open;

(11) Bill stacker door open or bill stacker removed; and

(12) Printer errors (If internal printer is supported).

(b) If the redemption kiosk uses error codes instead of a text explanation of the error conditions, a description of error codes and their meanings must be affixed on the inside of the redemption kiosk. If any of the above error conditions occur during the acceptance and/or escrowing of a ticket voucher, the ticket voucher must be returned to the patron without a status change on the ticket validation system or, once the error condition is cleared, proceed to pay the patron and have a status of 'Redeemed' on the system.

325:85-21-28. Maximum redeemable value

The maximum ticket value that can be paid by a kiosk is: $1,199.99.

325:85-21-29. Metering

The redemption kiosk must maintain the following meters, which can be by denomination:

(1) A "Total In" meter that accumulates the total value of all bills and ticket vouchers accepted by the device. Separate 'In meters' shall report the value of all tickets redeemed and the value of all bills redeemed; and

(2) A "Total Out" meter(s) for payments issued by the machine. Separate 'Out meters' shall report the value of all coins dispensed and the value of all bills dispensed.

325:85-21-30. Clearing meters

The redemption kiosk must not have a mechanism whereby an unauthorized user can cause the loss of stored accounting meter information.

325:85-21-31. Required logs

Logs must be maintained in critical memory. For a redemption kiosk that uses a paper log, the log must be housed within the redemption kiosk and must contain the following:

(1) A "Voucher In event log," which must properly log the following information about the voucher redeemed:

(A) Date/time of redemption;

(B) Amount of voucher; and

(C) At least last 4-digits of validation number.

(2) The redemption kiosk must maintain at least 35 events in the "Voucher In" event log.

(3) If the device utilizes a printer to record the information required within this section, the printer must be capable of monitoring any printer fault.

325:85-21-32. Ticket acceptance

Tickets may only be accepted when the redemption kiosk is communicating with the system. Tickets inserted into a redemption kiosk must be rejected when the system link is down and payment shall only be made when the ticket is 'Stacked' within the bill stacker.

SUBCHAPTER 25. TRANSPORTATION, RECEIPT, INSTALLATION AND DISPOSAL OF GAMING MACHINES

325:85-25-1. Restriction on sales, display, distribution, transportation and operation of Gaming Machines

(a) Except as otherwise provided in these rules, no Person may sell, display, supply, ship, transport, or distribute any Gaming Machine or Component thereof for use or play by a Racetrack Gaming Operator Licensee in Oklahoma. Further, no Gaming Machine of a Racetrack Gaming Operator Licensee may be sold, shipped, transported or distributed out-of-State other than by the Racetrack Gaming Operator Licensee itself, unless the Person shipping, transporting or distributing the Gaming Machine is licensed by the Commission as a Distributor, Manufacturer, or Distributor/Manufacturer.

(b) No Racetrack Gaming Operator Licensee may sell or transfer a Gaming Machine to any Person that could not lawfully own or operate the Gaming Machine.

(c) No purchaser or transferee may operate a Gaming Machine at a Gaming Facility without first obtaining a Racetrack Gaming Operator License in the manner set forth in this Title.

325:85-25-2. Transportation Of Gaming Machines into the state

(a) A Gaming Machine is shipped or transported into the State when the starting point for shipping or transporting begins outside the State and the shipping or transporting terminates in the State.

(b) A licensed Manufacturer shipping or transporting a Gaming Machine into the State for use at a Gaming Facility must provide the following information to the Commission, prior to shipment, on forms provided or approved by the Commission:

(1) the full name, address, and license number of the Person making the shipment;

(2) the method of shipment and the name of the carrier, if any;

(3) the full name, address, and license number of the Person to whom the Gaming Machines are being sent and

the destination of the shipment, if different from the address;
(4) the number of Gaming Machines in the shipment;
(5) the serial number of each Gaming Machine;
(6) the model number and description of each Gaming Machine;
(7) the expected arrival date of the Gaming Machines at their destination within the State; and
(8) such other information as required by the Commission.

325:85-25-3. Receipt of Gaming Machines in the state

(a) Any Person in the State that receives a Gaming Machine to be used in a Gaming Facility must, upon receipt of the Gaming Machine, provide the Commission with the following information on forms provided or approved by the Commission:
(1) the full name, address, and license number of the Person receiving the Gaming Machine;
(2) the full name, address, and license number of the Person from whom the Gaming Machine was received;
(3) the date of receipt of the Gaming Machine;
(4) the serial number of each Gaming Machine;
(5) the model number and description of each Gaming Machine;
(6) the Manufacturer of the Gaming Machine;
(7) the location where the Gaming Machine will be placed and the license number of the licensed premises;
(8) the expected date and time of installation of the Gaming Machine at the new location; and
(9) such other information as required by the Commission.

(b) If such Gaming Machine will not be placed in operation within five days of its receipt, the Person who received the Gaming Machine must notify the Commission of the address where the Gaming Machine is warehoused. The warehouse location must be approved in advance by the Commission. At the time such Gaming Machine is removed from inventory and transported to another location within the State, the Racetrack Gaming Operator Licensee must comply with the requirements of these rules.

325:85-25-4. Transportation of Gaming Machines between Commission licensed Gaming Facilities in the state

(a) Manufacturer Licensees, Distributor Licensees, and, subject to the limitations set forth in these rules, Racetrack Gaming Operators Licensees are authorized to transport Gaming Machines within the State.

(b) Except as otherwise provided in these rules, any authorized Person transporting a Gaming Machine from one location to another in the State for use by a Gaming Facility licensed by the Commission must notify the Commission before transporting the Gaming Machine and provide the following information on forms provided or approved by the Commission:
(1) the full name, address, and license number of the Person transporting the Gaming Machine from its current location;
(2) the reason for transporting the Gaming Machine;
(3) the full name, address, and license number of the Person to whom the Gaming Machine is being sent and the destination of the Gaming Machine if different from that address;
(4) the name and address of the carrier and the method of transport;
(5) the model and serial number of the Gaming Machine;
(6) the Gaming Machine License number, if any;
(7) the Manufacturer of the Gaming Machine;
(8) the expected date and time of delivery and/or installation of the Gaming Machine at the new location;
(9) such other information as the Commission may require.

(c) This section does not apply to the movement of Gaming Machines within the same Gaming Facility. Such relocation is subject to Commission approval pursuant to these Rules.

(d) A Racetrack Gaming Operator Licensee may sell or transfer a Gaming Machine only to another Racetrack Gaming Operator Licensee or to a licensed Distributor, Manufacturer, or licensed Distributor/Manufacturer, or a federally recognized Indian tribe that is operating under a Compact. The Racetrack Gaming Operator Licensee must notify the Commission in advance by providing the information required by this section.

325:85-25-5. Approval to distribute Gaming Machines outside of the state

(a) Manufacturers and Distributors located in the State may not sell, ship, transport, or distribute out of the State a Gaming Machine that has been used or located in a Gaming Facility without the prior approval of the Commission. Applications for approval to sell, ship, transport, or distribute gaming machines out of the State must be made, processed, and determined in such manner and using such forms as the Commission may provide or approve. Each application must include:
(1) the full name, state of residence, and address of the purchaser;
(2) the full name, state of residence, and address of the Person to whom shipment is being made, if different than the purchaser;
(3) the destination;
(4) the number of Gaming Machines to be shipped;
(5) the serial number of each Gaming Machine;
(6) the model number of each Gaming Machine and year manufactured;
(7) the denomination of each Gaming Machine, if applicable;
(8) the expected date and time of shipment;
(9) the method of shipment and name and address of the carrier; and
(10) a statement by the purchaser under penalty of perjury that the GamingMachines will be used only for lawful purposes.

(b) Manufacturers and Distributors may not ship Gaming Machines to any destination where possession of Gaming Machines is illegal.

(c) If the Commission does not deny the application for approval to distribute Gaming Machines outside of the State within 10 business days of receipt of a complete application, the application will be deemed approved.

325:85-25-6. On-site testing, installation and placement of Gaming Machines - including each Player Terminal and each game

(a) All Gaming Machines - including each Player Terminal and each game - at a Gaming Facility must be physically located as follows:

(1) in an area that is at all times monitored by the Racetrack Gaming Operator Licensee or a Gaming Employee to prevent access or play of the Gaming Machines by Persons under the age of 18;

(2) in an area that ensures that public access to the Gaming Machines is restricted to Persons legally entitled to play the Gaming Machines at the licensed premises; and

(3) in the sight and Control of the Racetrack Gaming Operator, Licensee or a Gaming Employee.

(b) The initial installation and placement of each Player Terminal and each game within a Gaming Facility must take place in the presence of a Gaming Agent who will at the time of installation test each Player Terminal and each game to ensure that each Player Terminal and each game is identical to a prototype that has been certified by an Independent Testing Laboratory. If the on-site test indicates that a Player Terminal or game does not conform to the certified prototype, the Racetrack Gaming Operator Licensee shall remove the game or Player Terminal from the floor and it may not be placed into operation until such time, if any, as a Gaming Agent finds that it is identical to a prototype certification issued by an Independent Testing Laboratory.

(c) If the on-site test by the Gaming Agent demonstrates that the game or Player Terminal is identical to a prototype certification issued by an Independent Testing Laboratory, the Gaming Agent shall seal the Program Storage Device with a Commission numbered seal.

(d) The Gaming Agent shall also perform a test to ensure that the game and Player Terminal are operating properly, then will conduct a test to determine that they are properly communicating with the Racetrack Gaming Operator Licensee's accounting system(s). Only machines and games that are found to be identical to prototypes certified by an Independent Testing Laboratory and that pass both the operation and communication tests conducted by the Gaming Agent may be installed and placed into operation.

(e) Once the Program Storage Device has been sealed by a Gaming Agent, the seal may only be broken or removed in the presence of a Gaming Agent. The seal may be broken or removed for the purposes of repair or Commission-authorized change to the Program Storage Device in the presence of a Gaming Agent, who, after the change or repair, will verify the new software, if applicable, retest the machine and game and reseal it if the tests show the machine and game are in compliance. If, after retesting, they are found not to be in compliance, the machine or game cannot be placed into operation until such time that the Gaming Agent determines that the machine or game complies with the applicable requirements.

(f) Any relocation of a Player Terminal or game within the licensed premises requires prior written approval by the Gaming Agent.

(g) Licensed Manufacturers and Distributors may store and display, and Persons certified pursuant to this Title may repair, gaming machines or devices only at locations approved in advance by the Commission.

325:85-25-7. Disposal of Gaming Machines

(a) A Gaming Machine used or located at a Gaming Facility may be disposed of only with the Commission's approval and only if the manner of disposition makes the Gaming Machine incapable of use or operation. Any Person seeking to dispose of such Gaming Machine must notify the Commission in writing prior to disposal and provide the following information:

(1) the full name, address, and license number of the Person seeking to dispose of the Gaming Machine;

(2) the serial number of the Gaming Machine;

(3) the model number and description of the Gaming Machine;

(4) the Manufacturer of the Gaming Machine;

(5) the Gaming Machine License number;

(6) the Gaming Machine's hard meter readings;

(7) the location of the Gaming Machine;

(8) the proposed manner, time, and place of disposal; and

(9) any other information required by the Commission.

(b) Unless the Commission notifies the Person seeking to dispose of the Gaming Machine within 30 days of receipt of the notice required by this section, the method of disposal will be deemed approved.

(c) If the disposing of a Gaming Machine is not conducted in the presence of a Gaming Agent, the Person seeking to dispose of a Gaming Machine must submit to the Commission, within 10 days of disposal, a sworn affidavit verifying the date, time, place, and manner of disposal and the names of all Persons witnessing the disposal.

SUBCHAPTER 27. REQUIREMENTS FOR AUDITS PERFORMED BY GAMING AGENTS

325:85-27-1. Daily and spot audits

(a) The Commission, through its Gaming Agents or otherwise, is authorized to conduct a daily audit of gaming proceeds, drop count (which can include examination of full reports and records of specific machines as well as reports from the Racetrack Gaming Operator Licensee's Central Computer) and may also audit internal controls, surveillance procedures, audit procedures, compulsive gambling programs, and any other activities at the Gaming Facility. The Commission may further conduct full annual audits of gaming operations. Further, the Commission, through its Gaming Agents or otherwise, may conduct spot audits of games, machines, devices and the Central Computer system.

(b) Such audits shall be in addition to audits performed by the Commission and audits performed by the Office of the State Auditor and Inspector.

[OAR Docket #06-1151; filed 5-26-06]

TITLE 325. OKLAHOMA HORSE RACING COMMISSION
CHAPTER 90. GAMING OPERATIONS

[OAR Docket #06-1152]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions [NEW]
325:90-1-1. [NEW]
325:90-1-2. [NEW]
Subchapter 3. Security and Surveillance Minimum Requirements [NEW]
325:90-3-1. [NEW]
325:90-3-2. [NEW]
325:90-3-3. [NEW]
325:90-3-4. [NEW]
325:90-3-5. [NEW]
325:90-3-6. [NEW]
Subchapter 5. Unresolved Patron Disputes [NEW]
325:90-5-1. [NEW]
325:90-5-2. [NEW]
325:90-5-3. [NEW]
325:90-5-4. [NEW]
325:90-5-5. [NEW]
Subchapter 7. Smoking Regulations [NEW]
325:90-7-1. [NEW]
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325:90-5-3. [NEW]
325:90-5-4. [NEW]
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INCORPORATED BY REFERENCE:
Not Applicable
ANALYSIS:
After SQ 712 was approved in the November, 2004 General Election, the Oklahoma Horse Racing Commission developed the original *Rules for Racetrack Gaming*. Those rules were adopted under emergency rulemaking procedures on March 17, 2005, and Governor Henry approved them April 6, 2005. In the time since approval of the original rules, some of the stakeholders - the racetracks and the horsemen's representative organizations - have contended that these original rules placed the racetracks and horsemen at a competitive disadvantage to Tribal casinos for the following reasons: a) the rules did not completely follow the language in the Act; b) further, the rules did not adequately address all of the authorized games; c) the rules introduced a stricter regulation that restricted the operation of the games, resulting in seemingly unnecessary regulation and language not found in the Act; and d) the original rules also set criteria and specifications regarding the functioning of the games that unfortunately did not allow for technological advances in the evolution of the authorized games.

The Ad Hoc Committee on Gaming Rules was appointed by Chairman Calvert at the December 15, 2005 Commission meeting to address the concerns. Membership on the Ad Hoc Committee included some of the key stakeholders. The Committee, chaired by Chairman Randy Calvert, consisted of three (3) Commissioners of the Oklahoma Horse Racing Commission [Commissioners Randy Calvert, Roger Cole and Patrick Grimmett], the Executive Director of the Horse Racing Commission [Constantin A. Rieger], the Commission Counsel [Neal Leader], one (1) representative of the Oklahoma Quarter Horse Racing Association [Debbie Schauf], one (1) representative of the Thoroughbred Racing Association of Oklahoma [Joe Lucas], racetrack representatives [Scott Daruty for Remington Park, Bob Rabon for Blue Ribbon Downs and Mark Enterline for Will Rogers Downs], Oklahoma Thoroughbred Association [R.D. Logan] and John Smicklas [Thoroughbred Owner]. Through a number of long meetings from December, 2005 through March, 2006, rule amendments were drafted. At the March 23, 2006 Rescheduled Regular Meeting, the Commission considered the rule amendments and adopted them under both emergency and permanent rulemaking procedures.
CONTACT PERSON:
Bonnie Morris, Assistant to the Administrator, Oklahoma Horse Racing Commission, Shepherd Mall, 2614 Villa Prom, Oklahoma City, OK 73107, (405) 943-6472

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

325:90-1-1. Purpose

The Rules in this chapter provide requirements and procedures for unresolved patron disputes and for compulsive gambling assistance plans which include minimum standards,

employee training and annual reporting regarding compulsive gambling activities.

325:90-1-2. Definitions

Unless otherwise defined below, terms used in this chapter have the same meanings as set forth in the State-Tribal Gaming Act:

"Act" means the State-Tribal Gaming Act enacted by the people with passage of State Question 712.

"Authorized Games" means Electronic Amusement Games as defined in the Act, Electronic Bonanza-Style Bingo Games as defined in the Act, Electronic Instant Bingo Games as defined in the Act, Compact Electronic Games as defined in these Rules, and Non-Compact Electronic Games as defined by these Rules.

"Commission" means the Oklahoma Horse Racing Commission.

"Executive director" means the executive director of the Commission.

"Gaming agent" means a Commission agent trained in machine gaming, responsible for on-site enforcement of the Act and these rules and other regulatory responsibilities as assigned by the Executive Director.

"Gaming employee" means any employee of a Racetrack Gaming Operator Licensee who works in any capacity within the confines of the Gaming Facility.

"Gaming employee license" means a license issued to a Gaming Employee by the Commission.

"Gaming facility" means that area within an Organization Licensee's Racetrack Premises approved by the Commission that has been set aside for the use of Authorized Games and related activities and access to which is limited to patrons 18 years of age or older.

"Minor" means any individual less than eighteen (18) years of age.

"Organization license" means a license issued by the Commission which authorizes the licensee to conduct a race meeting in Oklahoma and accept pari-mutuel wagers on the outcome of live and simulcast horse racing.

"Organization licensee" means any Person receiving an Organization License issued by the Commission.

"Person" means any individual, partnership, corporation, or other association or entity.

"Racetrack gaming operator license" means a license issued by the Commission which authorizes an Organization Licensee to conduct Authorized under the regulation, implementation and enforcement of the Commission.

"Racetrack gaming operator licensee" means any Organization Licensee which has been issued a Racetrack Gaming Operator License by the Commission.

"Racetrack premises" means the property that is owned or leased by the Organization Licensee that is used for racetrack purposes.

"Rule" means the Commission's *Rules for Racetrack Gaming*.

SUBCHAPTER 3. SECURITY AND SURVEILLANCE MINIMUM REQUIREMENTS

325:90-3-1. Surveillance Systems

(a) Each Racetrack Gaming Operator Licensee must install, maintain and continuously operate an on-site surveillance system at its licensed Gaming Facility. The purpose of the surveillance system is to assist the Racetrack Gaming Operator Licensee and the State in safeguarding the Licensee's assets, in deterring, detecting and prosecuting criminal acts, and in maintaining public confidence and trust that licensed gaming activity is conducted honestly and free of criminal elements and activity.

(b) The surveillance system plan must include descriptions of all equipment used by the surveillance system, a blueprint or diagram that shows all of the areas to be monitored and the placement of surveillance equipment in relation to the activities being observed, a description of the procedures used in the operation of the surveillance system, and any other information required by the Commission. To ensure the integrity of the surveillance system, access to the surveillance system plan, and any related information, shall be limited to authorized employees or agents of the Racetrack Gaming Operator Licensee and the Commission.

(c) The surveillance system, through the use of fixed and moveable cameras, must possess the ability to monitor and record the Gaming Facility floor and all Player Terminals from multiple angles to ensure the Racetrack Gaming Operator Licensee's ability to monitor and record all activities at each Player Terminal. The surveillance system must provide sufficient clarity to permit identification of players, employees, patrons and spectators. Each camera shall be installed in a manner that prevents it from being readily obstructed, tampered with, or disabled by customers or employees.

(d) Employees of the Racetrack Gaming Operator Licensee, when assigned to monitoring duties in the surveillance room, shall have no other gaming related duties while performing such duties.

(e) The interior of the surveillance room shall not be visible or accessible to the public.

(f) Agents of the Commission's Law Enforcement Division, upon presentation of proper Commission credentials, shall be provided immediate access to the surveillance room and other surveillance areas. In addition, these Agents are to be provided, upon request, copies of recorded videotapes of activities as well as copies of any images produced on a video printer. Agents of the Commission's Law Enforcement Division shall have absolute, unfettered access to the surveillance room at all times.

(g) Except in the event of circumstances beyond the reasonable Control of the Licensee or unless authorized by the Commission, the surveillance room shall be maintained at all times by a sufficient number of approved surveillance operators as reflected in the security plan approved by the Commission. The Executive Director, after consultation with the Commission's Director of Law Enforcement, may require additional surveillance personnel should the Executive Director determine that an inadequacy of surveillance monitoring exists.

(h) Before implementing any material changes to a surveillance system that affects the approved security plan, the Racetrack Gaming Operator Licensee must submit the proposed changes to the Commission's Director of Law Enforcement for approval.
(i) A Racetrack Gaming Operator Licensee must notify a Gaming Agent immediately of any failure of the surveillance system to continuously monitor the Gaming Facility or to otherwise operate properly. The Commission may require temporary suspension of gaming activities until the surveillance system is restored.

325:90-3-2. Security and Surveillance Logs
(a) The Racetrack Gaming Operator Licensee shall maintain a surveillance log(s) approved by the Commission's Director of Law Enforcement. The log(s) shall be maintained by surveillance room personnel in the surveillance room. The Commission's Law Enforcement Division staff and other Commission staff authorized by the Director of Law Enforcement shall have access at all times to the log(s). A log(s) entry shall be made in the surveillance log(s) of each surveillance activity. The following information shall be recorded in the surveillance log(s):
(1) the names of all Persons entering or exiting the surveillance room;
(2) a summary, including the date and time each surveillance activity commenced and terminated;
(3) record of any equipment or camera malfunctions;
(4) description of the activity observed or performed; and
(5) any additional information as required by the Commission's Director of Law Enforcement or Gaming Agent.
(b) The Racetrack Gaming Operator Licensee shall maintain a security log of any and all unusual occurrences for which the assignment of a security department employee is made. Each incident, without regard to materiality, shall be assigned a sequential number and an entry made in the log(s) containing, at a minimum, the following information:
(1) the assignment number;
(2) the date of the incident;
(3) the time of the incident;
(4) the location of the incident;
(5) the nature of the incident;
(6) the Person(s) involved in the incident; and
(7) the security department employee(s) assigned.

325:90-3-3. Storage and retrieval of surveillance recordings
(a) All surveillance recordings shall be retained for at least seven days, unless these Rules provide otherwise, and shall be listed on a log by surveillance personnel with the date, times, and identification of the Person monitoring or changing the tape or other recording medium in the recorder. Original surveillance recordings will be released to the Commission's Law Enforcement Division upon demand.
(b) Any surveillance recording of illegal or suspected illegal activity shall, upon completion of the tape or other recording medium, be removed from the recorder and etched or otherwise labeled in a manner as approved by the Commission's Director of Law Enforcement with date, time and identity of surveillance personnel. The recordings shall be placed in a separate, secure area and notification given to the Commission's Law Enforcement Division.
(c) All surveillance recordings relating to the following shall be retained in a secure area approved by the Commission Director of Law Enforcement for at least 15 days and shall be listed on a log maintained by surveillance personnel:
(1) all count room areas;
(2) the vault area;
(3) all credit and fill slip confirmation recordings; and
(4) any areas with cashiers or where the patrons go to cash out vouchers.

325:90-3-4. Maintenance and testing
The Racetrack Gaming Operator Licensee shall be responsible to ensure that any malfunction of surveillance equipment shall be immediately repaired or replaced with a working unit. If immediate replacement is not possible, alternative live monitoring must be provided by the Racetrack Gaming Operator Licensee's security personnel; otherwise, gaming in the unmonitored area(s) of the Gaming Facility must be immediately ceased.

325:90-3-5. Surveillance system compliance
The Racetrack Gaming Operator Licensee shall have a continuing duty to review its surveillance system plan to ensure the surveillance system plan remains in compliance with provisions of the Act and Commission Rules.

325:90-3-6. Commission office
The Racetrack Gaming Operator Licensee shall provide a private on-site office for use by the Commission and its Gaming Agents with the same surveillance monitoring capability as is available to the Racetrack Gaming Operator Licensee's surveillance staff.

SUBCHAPTER 5. UNRESOLVED PATRON DISPUTES

325:90-5-1. Unresolved Patron Disputes
(a) This Subchapter deals with disputes between the Racetrack Gaming Operator Licensee and a patron involving a game outcome, prize, fee paid or other aspect of a player's use of an Authorized Game. In the event a dispute arises with a patron and the dispute is not resolved to the patron's satisfaction within two hours, the Racetrack Gaming Operator Licensee must notify the patron that the patron has a right to contact a Gaming Agent regarding the dispute.
(b) A Racetrack Gaming Operator Licensee must immediately notify the Gaming Agent if the Racetrack Gaming Operator Licensee refuses to pay alleged winnings to a patron and the Racetrack Gaming Operator Licensee and the patron are unable to resolve the dispute to the patron's satisfaction within

two hours. This notice, which must be in writing, shall include the following information:

(1)The name, address and phone number of the patron.

(2) The nature of the dispute.

(3) The amount of money involved in the dispute.

(4) The number of machines involved and the name of the game involved.

(c) Upon receipt of such notice, the Gaming Agent may assist the parties in trying to resolve the dispute. Patron disputes not resolved to the patron's satisfaction within 48 hours of the occurrence of the dispute shall be decided by the Commission in the following manner. The initial determination of unresolved disputes involving $500.00 or less will be made by the Gaming Agent. The Gaming Agent will conduct whatever review he/she deems necessary and will determine whether payment should be made to the patron. The determination shall be based on a review of all available surveillance tapes, Gaming Machine records, and required written statements from both the Racetrack Gaming Operator Licensee and the patron. The Racetrack Gaming Operator Licensee shall make all audio/visual tapes and records available to the Gaming Agent with failure to do so resulting in an automatic decision in favor of the patron.

(d) The Gaming Agent's determination shall be made in writing and state the factual and legal basis for the decision unless both the Racetrack Gaming Operator Licensee and the patron waive this requirement and agree to an expedited verbal decision by the Gaming Agent. Expedited, verbal decisions shall be final and unappealable, and the patron shall be advised of this fact before waiving his/her right to a written determination. Written decisions are appealable to the Executive Director, and the Executive Director's decision is appealable to the District Court under the provisions of the Oklahoma Administrative Procedures Act.

(e) Unresolved disputes involving more than $500.00 will be initially decided by the Executive Director. The Executive Director's decision in all instances shall be in writing and shall be based on a review of all available surveillance tapes, Gaming Machine records, required written statements from both the Racetrack Gaming Operator Licensee and the patron. The Executive Director's decision may be appealed to the Commission and thereafter to the District Court under the provisions of the Oklahoma Administrative Procedures Act.

325:90-5-2. Compulsive Gambling Assistance Plan

(a) An applicant for a Racetrack Gaming Operator License must submit with the application a plan to address compulsive gambling in accordance with the requirements of these regulations for assisting in the prevention and education of compulsive gambling.

(b) No Racetrack Gaming Operator License application will be approved unless the Commission first approves the applicant's compulsive gambling assistance plan.

(c) Failure to implement the compulsive gambling assistance plan or to satisfactorily maintain and administer a plan once implemented will be grounds for suspension or revocation of the Racetrack Gaming Operator License, assessment of a fine, or both.

(d) A plan must meet or exceed the minimum standards set forth in these Rules. The development of such a plan by the applicant and the approval of a plan by the Commission are conditions of issuance of the original Racetrack Gaming Operator License. The maintenance of a plan, as approved by the Commission, is a condition of annual renewal of the license.

325:90-5-3. Minimum standards for Compulsive Gambling Assistance Plan

(a) The compulsive gambling assistance plan must include all of the following elements unless the applicant or Racetrack Gaming Operator Licensee obtains a written waiver of any element from the Commission:

(1) Identification of a plan manager or other Person responsible for ensuring that a plan is implemented and administered by the Racetrack Gaming Operator Licensee and monitored to maintain the minimum standards established by these rules;

(2) A mission statement that identifies the goals of the Racetrack Gaming Operator Licensee in administering a plan;

(3) Policies concerning the handling of compulsive gambling problems, commitment to training, intervention, the employee's role and duties, management's role and duties, and the patron's responsibilities;

(4) Procedures to determine appropriate intervention techniques in a given circumstance, and carrying out the intervention techniques;

(5) Printed materials to educate patrons about compulsive gambling and inform them of local and Statewide resources available to compulsive gamblers and their families. The materials may include signs and posters located inside the licensed premises and brochures discussing compulsive gambling issues and sources of treatment and information. A plan must also specify a source of the printed materials and proposed distribution methods;

(6) Policy and procedures that prohibit facilitating, participating in, or allowing the issuance of any loans or extension of credit to a patron for gaming purposes;

(7) A comprehensive Gaming Employee and on-site Key Executive training program satisfactory to the Commission, including training manuals and other materials necessary to educate employees about compulsive gambling issues; the training plan must include instruction in the psychology of the compulsive gambling, methods of recognizing compulsive gambling behavior, intervention techniques and other subjects as determined by the Commission;

(8) Completion and submission of a form certifying to the Commission's satisfaction that each employee required to obtain the training has done so within the time period specified by these Rules;

(9) Details of a follow-up training program to periodically reinforce employee training;

(10) Estimated costs for implementation and administration;

(11) Timetable and procedures for implementing the compulsive gambling assistance plan. A plan must be

implemented no later than thirty (30) days from the date gaming commences on the licensed premises;

(12) Preventing gaming by Minors; and

(13) Any other policies and procedures designed to encourage responsible gaming that the applicant or Racetrack Gaming Operator Licensee wishes to include.

325:90-5-4. Employee training regarding Compulsive Gambling Assistance Plan

(a) The compulsive gambling assistance plan must be designed with employee training and education as fundamental aspects of a plan. The purpose of the training is to develop awareness of compulsive gambling and to provide resources to assist the employee in handling compulsive gambling issues.

(b) The employee training program must include training and materials on the following topics:

(1) characteristics and symptoms of compulsive gambling behavior;

(2) prevalence of compulsive gambling in the general population;

(3) relation of compulsive gambling to other addictions;

(4) social costs of compulsive gambling, such as indebtedness, costs for treatment, suicide, criminal behavior, lost jobs, and counseling for family problems;

(5) identification of vulnerable populations, including women, low-income patrons, the elderly and Persons who abuse drugs and alcohol;

(6) intervention techniques to be employed where a compulsive gambling problem is identified or suspected; and

(7) assistance and referral programs, including specific resources and training on how to discuss compulsive gambling with a patron and give advice concerning access to available services.

(c) Training must be conducted within thirty (30) days of the employee's hire date. Certification of such training must be submitted on a form approved by the Commission. Failure to submit the required certification may result in administrative action against the Racetrack Gaming Operator Licensee.

325:90-5-5. Annual report regarding Compulsive Gambling Activities

Each Racetrack Gaming Operator Licensee must submit to the Commission, initially six months following the commencement of gaming activities and thereafter by March 31 annually, a report detailing the Racetrack Gaming Operator Licensee's compulsive gambling activities for the previous calendar twelve month period ending December 31.

SUBCHAPTER 7. SMOKING REGULATIONS

325:90-7-1. Requirements for smoking in Gaming Facility

The gaming areas of the premises of an Organization Licensee and, except for the off-track wagering facilities specified in Section 205. 6a of Title 3A of the Oklahoma Statutes, the areas where simulcast wagering is conducted by an Organization Licensee shall not be subject to the provisions of Section 1247 of Title 21 of the Oklahoma Statutes or to the provisions of the Smoking in Public Places and Indoor Workplaces Act (FNI) if the following conditions are met:

(1) Each gaming or simulcast area in which smoking is permitted shall be fully enclosed, directly exhausted to the outside, under negative air pressure so smoke cannot escape to nonsmoking areas when a door is opened, and no air from a smoking area is recirculated to nonsmoking areas of the building; and

(2) No exhaust from such gaming or simulcast area shall be located within twenty-five (25) feet of any entrance, exit, or air intake.

[OAR Docket #06-1152; filed 5-26-06]

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

[OAR Docket #06-1040]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Human Resources Management Division (HRMD)
Part 4. Alcohol and Drug Testing ~~Policy~~Rules Applicable to ~~Agency Facilities Providing Direct Care to Children or Individuals with Developmental Disabilities~~All OKDHS Employees
340:2-1-40 through 340:2-1-44 [AMENDED]
(Reference APA WF# 06-03)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Sections 551 et seq. of Title 40 of the Oklahoma Statutes.
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n/a
ANALYSIS:
Human Resources Management Division (HRMD) proposed rule revisions establish rules for: (1) drug testing for all newly hired Oklahoma Department of Human Services (OKDHS) employees; (2) testing OKDHS employees suspected of using alcohol or illegal drugs while on duty; and (3) random testing for persons employed by OKDHS as direct care specialists.
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 SEPTEMBER 1, 2006:

SUBCHAPTER 1. HUMAN RESOURCES MANAGEMENT DIVISION (HRMD)

PART 4. ALCOHOL AND DRUG TESTING POLICY APPLICABLE TO ~~AGENCY FACILITIES PROVIDING DIRECT CARE TO CHILDREN OR INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES~~ OKDHS EMPLOYEES AND APPLICANTS

340:2-1-40. Purpose

The rules in this Part:

(1) establish ~~a~~ an Oklahoma Department of Human Services (OKDHS) alcohol and drug testing program for:

(A) testing all persons to whom a conditional offer of employment is made;

(B) reasonable suspicion testing for all OKDHS employees; and

(C) random testing for persons employed by OKDHS as direct care specialists, the job family which provides direct care to children or individuals with developmental disabilities~~, and persons who have received conditional offers of employment as direct care specialists. These rules also establish procedures for reasonable suspicion testing of all persons employed by Oklahoma DHS in shelters, group homes, and institutions providing direct care to children or individuals with developmental disabilities.~~; and

(2) ~~These rules~~ are in compliance with Standards for Workplace Drug and Alcohol Testing Act contained in Chapter 15 of Title 40 of the Oklahoma Statutes.

340:2-1-41. Prohibition

The Oklahoma Department of Human Services (OKDHS) prohibits all employees~~, including those not subject to alcohol and drug testing,~~ from:

(1) providing ~~departmental~~ OKDHS services while under the influence of alcohol or illegal drugs~~, from~~;

(2) possessing or using alcohol or illegal drugs in the workplace, ~~or~~ while on duty, or on-call; and

(3) ~~from~~ using any ~~use of~~ non-prescribed controlled substances in the workplace, while on duty, ~~or~~ off duty, or on-call.

340:2-1-42. Definitions

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

~~**"Affected applicant"** means any person making application through either initial hire, transfer, demotion, promotion, or reinstatement into the position of direct care specialist. The Department of Human Services (DHS), upon a conditional offer of employment, requires the affected applicant to undergo alcohol and drug testing and uses a refusal to undergo testing or a confirmed positive test result as a basis for refusal to hire.~~

~~**"Affected employee"** means any employee, whether permanent, classified, unclassified, probationary, or temporary, in the job family of direct care specialist. Affected employees may be tested randomly or upon reasonable suspicion.~~

"Alcohol" means ethyl alcohol or ethanol.

"Alcohol test" means a breath or saliva test administered for the purpose of determining the presence or absence of alcohol or its metabolites in a person's bodily tissue, fluids, or products. Testing of OKDHS employees is conducted and evaluated by qualified individuals and facilities licensed by the Oklahoma State Department of Health (OSDH) in accordance with Standards for Workplace Drug and Alcohol Testing Act. [40 O.S. § 551 - 565]

"Applicant" means any person making application for initial hire, reinstatement, or transfer from a state agency, for any position within the Oklahoma Department of Human Services (OKDHS), or for transfer, demotion, promotion, or reinstatement into the position of direct care specialist. OKDHS, upon a conditional offer of employment, requires the applicant to undergo alcohol and drug testing.

"Conditional offer of employment" means an offer made to an applicant for employment with OKDHS, conditioned upon successful completion of a drug and alcohol test prior to the start of employment.

"Confirmation test" means an alcohol or drug test, conducted in accordance with Drug and Alcohol Testing Rules, as amended, of ~~the Oklahoma State Department of Health~~ OSDH, to substantiate the results of a prior alcohol or drug test. [OAC 310:638-1-1 - 310:638-7-11] For urine or hair, the test ~~will be~~ is performed on the same sample or a split sample.

"Direct care staff" means any employee, whether permanent, classified, unclassified, probationary, or temporary, in the job family of direct care specialist.

"Drug" means any controlled substance approved for hair or urine testing by ~~the Oklahoma State Department of Health~~ OSDH, including amphetamines, cannabinoids, cocaine, phencyclidine (PCP), hallucinogens, methaqualone, opiates, barbiturates, benzodiazepines, synthetic narcotics, designer drugs, or a metabolite of any of the substances listed herein.

"Drug test" means a hair or urine test administered for the purpose of determining the presence or absence of a drug or

its metabolites in a person's bodily tissue, fluids, or products. Testing shall conform to the Drug and Alcohol Testing Rules, as amended, adopted by ~~the Oklahoma State Department of Health~~ OSDH. [OAC 310:638-1-1 - 310:638-7-11] The testing of ~~affected~~ OKDHS employees ~~of DHS~~ is conducted and evaluated by qualified individuals and facilities licensed by ~~the Oklahoma State Department of Health~~ OSDH in accordance with Standards for Workplace Drug and Alcohol Testing Act. [40 O.S. § 551 - 565]~~.~~

"Employee" means anyone employed by OKDHS, whether permanent, classified, unclassified, probationary, or temporary.

~~**"Employee subject to reasonable suspicion testing"** means any person employed in an Agency facility, institution, shelter, or group home which provides direct care to children or individuals with developmental disabilities.~~

"Random testing" means an objective mechanism for selecting ~~affected~~ direct care employees for alcohol and drug testing which results in an equal probability any ~~affected~~ employee from a group of ~~affected~~ direct care employees will be selected.

"Reasonable suspicion" means a belief an ~~affected~~ employee ~~or an employee subject to reasonable suspicion testing~~ is using or has used alcohol or drugs in violation of this policy. Reasonable suspicion is drawn from specific, objective, and articulable facts and reasonable inferences drawn from those facts in light of experience and training, and may be based upon but not limited to:

(A) documented observations, such as the physical symptoms or manifestations of being under the influence of alcohol or drugs while at work or on duty or the direct observation of alcohol or drug use while at work or ~~while~~ on duty;

(B) a report of alcohol or drug use while at work or on duty, provided by reliable and credible sources and which has been independently corroborated;

(C) evidence an ~~affected individual~~ employee has tampered with an alcohol or drug test as required by this policy; or

(D) evidence an ~~affected individual~~ employee is involved in the use, possession, sale, solicitation, or transfer of illegal drugs while on duty, ~~or while~~ on ~~departmental~~ OKDHS property, or ~~while~~ operating ~~departmental~~ state-owned vehicles, machinery, or equipment.

"Review officer" means a physician certified pursuant to Standards for Workplace Drug and Alcohol Testing Act [40 O.S. § 551 - 565] who reviews positive alcohol and drug test results and contacts each individual having a positive alcohol or drug test to determine if there is a medical reason for the positive test result.

340:2-1-43. Implementation of alcohol and drug testing of ~~affected individuals~~ OKDHS employees and applicants

(a) **Notice of communication.** ~~These~~ The local administrator or designee ensures a copy of the rules in Part 4 of this Subchapter are:

(1) ~~to be~~ conspicuously posted in all ~~Departmental~~ Oklahoma Department of Human Services (OKDHS) working units ~~providing direct care to children or individuals with developmental disabilities.~~;

(2) provided to all employees;

(3) provided to ~~All~~ employees ~~occupying positions subject to alcohol and drug testing shall receive a copy of these rules~~ 30 days prior to the initial implementation or implementation of changes ~~in the rules.~~; and

(4) ~~Each local administrator or his or her designee is responsible for obtaining and maintaining written documentation that each affected employee has received a copy of the rules. These rules must be provided to all employees and applicants~~ provided to each applicant upon his or her receipt of a conditional offer of employment.

(b) **Determination of ~~positions~~ persons subject to alcohol and drug testing.** Persons subject to alcohol and drug testing are included in (1) through (3).

(1) All applicants who are made conditional offers of employment are required to take a pre-employment drug and alcohol test. A confirmed positive test result, or a refusal to be tested, is a basis for refusal to hire.

(2) All employees of OKDHS are subject to reasonable suspicion drug and alcohol testing.

(3) Employees of OKDHS employed as direct care specialists are subject to random alcohol and drug testing. ~~All persons employed as direct care specialists must be notified in writing no less than 30 days prior to initial implementation of alcohol and drug testing that they occupy affected positions which will be subject to random alcohol and drug testing.~~

~~(c) **Employees not classified as direct care specialists.** Employees, not classified as direct care specialists, employed in an Agency facility, institution, shelter, or group home providing direct care to children or persons with developmental disabilities, are subject to reasonable suspicion testing for alcohol and drugs, even if such employees do not provide direct care.~~

~~(d) **Local administrator responsibilities.** Each local administrator or his or her designee is responsible for obtaining and maintaining written documentation that each individual subject to testing has been notified he or she is subject to testing and has received the Department's alcohol and drug testing rules.~~

(~~e~~c) **Types of testing.** The situations in which alcohol and drug testing occur are identified in (1) through (3) of this subsection.

(1) **Pre-employment or pre-placement.** All candidates conditionally offered initial hire, and all direct care candidates conditionally offered transfer, promotion, demotion, reinstatement, or placement into ~~affected~~ positions as direct care specialists are tested for alcohol and drugs. ~~Positive test results prohibit the hiring, transfer, promotion, demotion, reinstatement, or placement in an affected position. DHS employees seeking reinstatement or placement into affected positions who test positive on an alcohol or drug test are referred to the Department's Employee Assistance Program (EAP).~~

(2) **Random testing.** Random alcohol and drug testing is administered at a minimum annual rate of 50% of direct care specialists. Tests are unannounced and are conducted throughout the calendar year. The Developmental Disabilities Services Division and the Children and Family Services Division ~~will~~ provide to the contracted testing vendor a regularly updated list of the names, Social Security numbers, and work locations for all direct care specialists ~~in affected positions~~.

(3) **Reasonable suspicion.** ~~Affected employees and employees subject to reasonable suspicion testing~~ Any employee may be tested upon documented grounds for reasonable suspicion in accordance with this policy.

(A) A request for reasonable suspicion testing of an individual must be submitted in writing to the ~~facility~~ local administrator, ~~setting forth~~ stating the indications upon which reasonable suspicion is based. The basis for reasonable suspicion testing is the employee:

(i) ~~Documented observations of~~ exhibits the physical symptoms or manifestations of being under the influence of alcohol or drugs; and

(ii) ~~may only be considered sufficient for reasonable suspicion testing if the individual recording the observation has~~ must be observed by two persons who have completed specialized training provided by OKDHS in recognizing physical symptoms or manifestations of being under the influence of alcohol or drugs~~, or has such knowledge through education and training, such as a medical doctor~~. Such specialized training is deemed to include an OKDHS on-line training course on OKDHS drug and alcohol policy approved for all employees. One of the individuals making the observation must be a supervisor. ~~Supervisors may use Form P-94, Reasonable Suspicion Checklist, in documenting reasonable suspicion.~~

(B) Upon approval by the ~~facility administrator or acting facility~~ local administrator, the employee is required to submit to alcohol or drug testing.

(f) **Arrangements for testing.** ~~Facility administrators or designees are~~ The local administrator or designee is responsible for ensuring employees and applicants in their facilities who are subject to testing are tested in accordance with this policy.

(g) **On duty testing.** Alcohol and drug testing of ~~employees shall occur~~ an employee occurs during or immediately after the ~~employees'~~ employee's work period. ~~Employees are~~ An employee is considered on duty during this time.

(h) **Testing procedures.** Testing for alcohol and drugs is a two step process.

(1) For alcohol, a breath or saliva test is performed as the first step. If positive for alcohol, a confirmation test is performed as the second step.

(2) Hair or urine ~~shall be~~ are used for the initial and the confirmation test for all drugs. Specimens are collected at the test site, and positive test results are reviewed by the review officer.

340:2-1-44. Disciplinary action

(a) **Disciplinary action for illegal drug involvement or usage.** Discharge proceedings are initiated for an Oklahoma Department of Human Services (OKDHS) employee:

(1) ~~Discharge proceedings are initiated for employees~~ with a confirmed positive result for a drug test not resulting from legitimate medical use of prescribed medication. No employee may be discharged as a result of a positive test result unless confirmed by a second test using gas chromatography, gas chromatography-mass spectroscopy, or an equivalent scientifically accepted method of equal or greater accuracy, approved by Drug and Alcohol Testing Rules~~.~~ [OAC 310:638-1-1 - 310:638-7-11] ; or

(2) ~~Discharge proceedings are also initiated for Department employees, whether in an affected position or not,~~ who ~~enter~~ enters a guilty or nolo contendere ~~pleas~~ plea for, or who ~~are~~ is found guilty of the on or off duty sale, distribution, ~~or~~ possession, ~~of illegal drugs~~ or the manufacture of illegal drugs.

(b) **Disciplinary action for positive alcohol test results.** ~~The Department~~ OKDHS follows progressive discipline for employees with positive alcohol test results. However, aggravating circumstances, such as the concurrent violation of other ~~Department~~ OKDHS policies or serious injuries or fatalities due to or contributed to by the use of alcohol, can result in more serious disciplinary action, including discharge.

(1) An ~~affected~~ employee's first incident of having an alcohol level from .02 to .039 results in a written reprimand.

(2) An ~~affected~~ employee's first incident of having an alcohol level from .04 to .079 results in a five day involuntary suspension without pay.

(3) Discharge proceedings are initiated for any incident when an ~~affected~~ employee is tested for alcohol and has an alcohol level of .08 or higher.

(4) Discharge proceedings are initiated for an ~~affected~~ employee's second positive test for alcohol within 24 consecutive calendar months of the first positive test result, regardless of the alcohol levels for either incident.

(c) **Refusal to submit.** Discharge proceedings are initiated for any ~~affected~~ employee who refuses to submit to an alcohol or drug test.

(d) **Permanent, classified employees who are discharged or suspended without pay.** Permanent, classified employees who are discharged, demoted, or suspended without pay as a result of a positive test for alcohol or drugs may appeal the discharge or suspension to the Oklahoma Merit Protection Commission pursuant to the Oklahoma Personnel Act and the Oklahoma Merit Rules for Employment.

[OAR Docket #06-1040; filed 5-23-06]

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

[OAR Docket #06-1042]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 15. Risk and Safety Management Program
Part 1. Risk Management Program
340:2-15-1 through 340:2-15-2 [AMENDED]
340:2-15-3 [REVOKED]
340:2-15-4 through 340:2-15-5 [AMENDED]
340:2-15-6 [REVOKED]
340:2-15-7 [NEW]
Part 3. Hazard Communication Program
340:2-15-25 [AMENDED]
340:2-15-26 [REVOKED]
340:2-15-27 [AMENDED]
340:2-15-27.1 [NEW]
340:2-15-28 [AMENDED]
340:2-15-29 through 340:2-15-33 [REVOKED]
Appendix L. Access Clause for Purchase Contract [REVOKED]
Appendix M. Material Safety Data Sheet Surrogate Statement [REVOKED]
(Reference APA WF# 06-02)
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Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; Section 1910.1200 of Title 29 of the Code of Federal Regulations; OAC 580:25-3; and Section 85.58 A of Title 74 of the Oklahoma Statutes.
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Revisions to Risk Management Program rules: (1) reflect the current title of the Support Services Division (SSD); (2) clarify current functions of the Risk Management Program; (3) remove obsolete definitions; (4) add new definitions; (5) amend current definitions; (6) clarify incident reporting responsibilities; (7) make stylistic and semantic improvements; (8) codify rules regarding motor vehicle safety and liability; (9) clarify the hazard communication program requirements; (10) revoke rules that are no longer applicable; and (11) revoke obsolete appendices.
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 AUGUST 1, 2006:

SUBCHAPTER 15. RISK AND SAFETY MANAGEMENT ~~PROGRAM~~

PART 1. RISK MANAGEMENT PROGRAM

340:2-15-1. Purpose

~~The purpose of this Subchapter is to demonstrate how the Department implements its statutory mandate to provide a risk management program. The State of Oklahoma Risk Management Program receives its authority from 74 O.S. Supp. 1986, § 85.34. The statute establishes the Risk Management Division within the Office of Public Affairs and describes the Division's duties. Risk Management duties of all state agencies including the Department of Human Services are also prescribed.~~ Under the guidance of the Department of Central Services (DCS), all state agencies are required to establish a Risk Management Program, appoint a risk manager, and assign personnel sufficient to perform required functions per Section 85.58 A of Title 74 of the Oklahoma Statutes.

(1) The Oklahoma Department of Human Services (OKDHS) Support Services Division (SSD) Risk, Safety, and Emergency Management Unit, risk manager is:

(A) the point of contact between OKDHS and DCS for all risk management functions, including incident scene management, investigations, reporting, and record keeping;

(B) responsible for coordinating all workers' compensation activities for OKDHS; and

(C) responsible for coordinating all aspects of employee and public safety for OKDHS as required by state and federal regulations including:

(i) employee safety training;

(ii) Oklahoma Department of Labor (ODOL) inspections; and

(iii) notice posting requirements.

(2) The local administrator or county director, in cooperation with the OKDHS risk manager, carries out the responsibilities of the Risk Management Program.

340:2-15-2. Definitions

~~The Risk Management Division of the Office of Public Affairs has promulgated rules and regulations for all State agencies to follow in order to be in compliance with the Oklahoma Risk Management Program. Key terms are defined by OPA which are valuable in understanding the scope and requirements of the Risk Management Program.~~ The following words and terms when used in this ~~Chapter,~~ Part shall have the following meaning, unless the context clearly indicates otherwise:

~~**"Agency" or "State"** means board, commisison, committee, institution, department, instrumeentally or entity designated to act in behalf of the State.~~

~~**"Agency-Owned Vehicle"** means any self propelled vehicle or mobile equipment which is owned by the State, whether or not it is licensed for road use.~~

~~**"Agency Risk Management Coordinator"** means the individual officer or employee of any Agency appointed by the Agency as the designated point of contract for the Risk Manager for all risk management purposes, and shall include any employee or agent of the Risk Management Coordinator and such assistants as may be necessary shall be employed or appointed by such Agency to supervise and manage the Agency Risk Management Program.~~

~~**"Agency Risk Management Program"** means the system within any individual Agency for coordination of Risk Management within such Agency, for coordination of Risk Management activities between the Agency and the Risk Management Division, and for elimination, reduction and minimization of all risk through a continuous effective loss prevention and loss control program, under the direction of the Risk Management Division.~~

"Authorized ~~Legal Counsel~~ legal counsel" means ~~that in case of liability incidents involving the State, it shall be the duty of~~:

(A) the Attorney General ~~to defend all actions, unless an agency~~ of the State ~~is~~ of Oklahoma; or

(B) an attorney authorized ~~by law to employ its own attorneys, in which case said attorneys may defend any action against the agency or the agency may request the Attorney General defend any action~~ to represent the Oklahoma Department of Human Services (OKDHS).

"Casualty incident" or **"liability incident"** means any liability occurrence or event:

(A) that results in personal injury or property damage; and

(B) where there is probable cause to believe that such event may give rise to a claim for damages against OKDHS or an OKDHS employee and:

(i) takes place upon or within any real property owned or used by OKDHS;

(ii) involves participation by any employee or volunteer of OKDHS who is acting within the scope of his or her employment and authority; or

(iii) involves any vehicle or other personal property owned by OKDHS and operated by an employee or volunteer of OKDHS.

"Claim" means the formal notice served upon proper legal authority by any claimant or the representative of any claimant, as provided by the Tort Claims Act~~, 51 O.S. Supp. 1986, § 151 et. seq~~.

"Claimant" means the person or ~~his~~ authorized representative who files notice of a claim in accordance with ~~51 O.S. Supp. 1986 § 151 et. Seq~~ the Tort Claims Act.

~~**"Liability Incident"** means any occurrence or event taking place upon or within any real property owned or used by the State of Oklahoma; or involving participation by any officer or employee (or volunteer or intern) of any Agency of the State of Oklahoma who may be acting within the scope of his or her employment; or, involving any Agency owned or operated motor vehicle, motorized equipment, aircraft, water vessel or other personal property; and,~~

~~(A) Which results in personal injury or property damage; and,~~

~~(B) In which there is probable cause to believe that such occurrence or event may give rise to a claim for damages against the State or other Agency or employee of the State or other Agency.~~

~~**"Non Agency-Owned Vehicle"** means a vehicle not owned by the State where such vehicle is operated by an employee or officer of the State on travel status, conducting business and the business conducted in within the scope of authority or employment of the employee or official.~~

~~**"Oklahoma Risk Management Program"** means the consolidated and centrally administered system for coordination of Risk Management activities between any Agency and the Risk Management Division. For acquisition through the Risk Management Division of property and casualty insurance for the management of all property, casualty and liability incidents, and for elimination, reduction and minimization of all risks through a continuous effective loss prevention and loss control program, under the direction of the Risk Management Division.~~

~~**"Operator"** means any person driving or controlling any motor vehicle, motorized equipment, aircraft, water vessel or other mobile personal property owned by the State.~~

"Property ~~or Casualty Incident~~ incident" means any occurrence or event ~~taking place upon or within~~ that involves any real or personal property owned by OKDHS or ~~used~~ in the possession of ~~by the State of Oklahoma; or, involving participation by any officer or employee (or volunteer or intern) of any Agency of the State of Oklahoma who may be acting within the scope of his or her employment; or, involving any Agency owned or operated motor vehicle, motorized equipment, aircraft, water vessel or other personal property of the state of other Agency; and, the results of which a thing of value~~ OKDHS for safekeeping, and as a result of the event, property is ~~injured~~ damaged, lost, or destroyed by accident, misfortune, or mishap.

"Reportable ~~Vehicle Incident~~ vehicle incident" means any occurrence or event involving a vehicle ~~resulting~~ that results in a liability incident~~, including acts arising out of law enforcement practices~~. ~~The term also~~ This includes any incident ~~involving a non Agency owned~~ that involves any vehicle or property ~~if~~ used to conduct business within the scope of authority or employment of ~~the Agency~~ an OKDHS employee, volunteer, or official.

"Risk ~~Manager~~ manager" means the ~~officer appointed to fulfill such position, as specified by law, and to serve as Executive Director~~ manager of the ~~Oklahoma Risk Management Program, within the~~ OKDHS Support Services Division (SSD) Risk, Safety, and Emergency Management ~~Division of the Office of Public Affairs,~~ Unit and ~~shall include any employee or Agent of~~ such staff as necessary to supervise and

manage the OKDHS Risk Management ~~Division acting within the scope of his authority~~ Program.

"Risk Management Program" means the system by which OKDHS identifies all risk and works to eliminate, reduce, or minimize that risk through a continuous loss prevention and loss control program. The system includes coordination of activities between OKDHS, the Department of Central Services (DCS), and the Oklahoma Department of Labor (ODOL).

"Settlement of ~~Claim~~ claim" means ~~the Risk Management Division of the Office of Public Affairs~~ DCS may settle a claim brought against ~~the State~~ OKDHS after conferring with authorized legal counsel, subject to any procedural requirements imposed by statute, resolution, or written policy.

"Vehicle" means any self-propelled vehicle or mobile equipment, regardless whether the equipment is licensed for road use, that is used by an OKDHS employee or volunteer for official business and is:

(A) owned or leased by OKDHS;
(B) a personal vehicle; or
(C) a privately leased vehicle.

340:2-15-3. The DHS Risk Management program [REVOKED]

~~Under the guidance of the Risk management Division of the Office of Public Affairs, all State Agencies, including DHS, are required to establish a Risk Management Program, to appoint a Risk management Coordinator, and to assign personnel sufficient to perform required functions, e.g., liability incident scene management, vehicle liability incident reporting and investigation, and record keeping. The DHS Risk Management Coordinator. The DHS Risk Management Coordinator, with such assistants as may be necessary, is responsible for supervision and management of the DHS Risk Management Program. The Coordinator is the designated point of contact for the OPA Risk Manager for all risk management purposes. The Coordinator is headquartered in the State office within the Administration Division. Among the duties of the position are:~~

~~(1) Site visits to each DHS institution, Oklahoma Medical Center, and field offices to ascertain that the Risk Management Program is in operation and that posters and signs are posted informing employees of their responsibilities under the program.~~

~~(2) Establishment of risk management committees in each institution and field office in coordination with DHS Administrators.~~

~~(3) Consultation with individual committees to establish goals, objectives and procedures for the specific facility for reviewing the causes of accidents, establishing preventive measures, and meeting reporting responsibilities.~~

~~(4) Performance of liaison duties for risk management activities at the Oklahoma Medical Center.~~

~~(5) Development and analysis of reporting procedures to determine the number of accidents and the amount of money expended through Workman's Compensation payments.~~

~~(6) Analysis of job classifications that appear to have a high incidence of accidents and the development of corrective action to improve safety performance.~~

~~(7) In conjunction with the Staff Development Unit, the design and presentation of safety programs to DHS staff.~~

~~(8) Investigation of accidents involving personal injury and coordination of findings with the Legal Division for the subsequent processing of claims.~~

340:2-15-4. Risk and safety management functions

(a) **Incident scene management.** ~~Working in conjunction with locally designated staff, the Risk Management Coordinator is responsible for assuring that proper~~ The local administrator or county director:

(1) takes steps ~~are taken~~ at the scene of any liability incident to ensure the safety and security of ~~personnel~~ all persons and property;

(2) manages the incident scene in the best interest of the Oklahoma Department of Human Services (OKDHS)~~.~~; and

(3) ~~All employees are to promptly report all potential liability incidents in which they are directly involved or witness to their immediate supervisor, area security office, and/or~~ conducts a preliminary investigation, with assistance from local law enforcement ~~agency responsible for the area~~ personnel, as needed.

~~(b) **Vehicle liability incidents.** The operator of an agency-owned or non agency-owned vehicle (private vehicle) involved in an incident shall immediately notify the nearest security office or law enforcement officer with responsibility for the area unless incapacitated by injury to the extent that notification is impractical. The operator is to remain on the scene and complete all acts required by law unless injuries or other extenuating circumstances exist which prevent the operator from remaining on the scene.~~

~~(1) The operator shall fill out the "In Case of Accident" form kept in the glove compartment or other designated place of all agency owned vehicles. This form shall be routed to the Employee's Immediate Supervisor who shall complete the "Standard Liability Incident Report" form, which together with the "In Case of Accident" form, shall be forwarded to the Agency Risk Management Coordinator. These forms will be forwarded to the Risk Management Division of the Office of Public Affairs as soon as the coordinator has completed any additional required investigation of the liability incident. Any liability incident involving a fatality, personal injury or property damage must also be reported immediately to the Risk Management Division of the Office of Public Affairs, at 405-521-4909. An answering service provides telephone coverage 24 hours a day, 7 days a week.~~

~~(2) Privately owned vehicles used for state business will be furnished a certificate of insurance and "In Case of Accident" form to be carried in the glove compartment or other designated place. These must be in the vehicle when the vehicle is sued for official state business. The insurance coverage begins when the vehicle is place in use on~~

~~official business and ends at the conclusion of that business.~~

~~(3) No employee who is involved in a potential liability incident, directly or as a witness, shall make any statement or execute any writing or document concerning the incident except as required by employees supervisor, the Risk Management Division, or by law.~~

~~(c)~~ **~~Driver and vehicle safety standards.~~** ~~The Office of Public Affairs has established the following driver and vehicle safety standards for all state agencies to follow:~~

~~(1) Primary Requirements.~~

~~(A) To operate a State vehicle of any type, or a personal vehicle for State business, an individual must have a valid driver's license.~~

~~(B) Under State law, employees must purchase liability insurance when using their vehicle for hire to the state and for personal use.~~

~~(C) Each employee or agent of the state must file Form Adm-100 with the Risk Management Unit as the unit must have on file proof of valid driver's license for all who drive on State business and proof of liability insurance for all drivers of private vehicles used for State business.~~

~~(D) Driver will use the vehicle only for State business and within the scope of the driver's employment/authority.~~

~~(E) Driver will wear his/her safety belt.~~

~~(F) Driver will observe all traffic laws.~~

~~(G) Driver will not allow an unauthorized person to drive the vehicle.~~

~~(H) Consumption of alcoholic beverages or narcotics prior to the operation of a State or Agency vehicle is prohibited.~~

~~(I) The State will assume no responsibility for passengers in a privately owned motor vehicles used for State business where the passengers are not furthering the State's business or authorized to act in behalf of the state.~~

~~(2) General Requirements.~~

~~(A) Backing of vehicles where the driver does not have a clear view of the entire area behind the vehicle will be accomplished with the assistance of a guide. If a second person is in the vehicle, he/she should guide the vehicle back using the appropriate hand and voice signals. If the driver is alone, he/she should check the area behind his/her vehicle before backing.~~

~~(B) Drivers will ensure that windows, headlights, taillights, and wipers are clear and operational at all times.~~

~~(C) In order to give ample warning to oncoming and following vehicles, turn signals must be utilized by drivers at all times, when making a turn or changing lanes.~~

~~(D) Do not "tail gate". When following other vehicles in normal traffic and under good weather conditions, a time gap of two seconds should be allowed.~~

~~(E) Drivers of State vehicles will drive in a courteous manner at all times.~~

~~(F) Emergency vehicles under emergency situations are exempt from normal motor vehicle laws, but are required to exercise due regard for the safety of all persons pursuant to 47 O.S. 1981, § 11-106.~~

~~(G) Drivers using their own personal vehicles while performing State business must have liability insurance on such vehicle.~~

~~(H) Drivers who are involved in two vehicle related incidents in a twelve (12) month period or three incidents in a thirty-six (36) month period will be required to take a driver improvement course approved by the State Risk Management Division. Upon proper application and for good cause shown, the Risk Management Division may waive this requirement.~~

~~(I) Special equipment such as tractor trailers, mowers, construction equipment, and mobile cranes shall not be operated without authorization by the Agency in charge.~~

~~(3) Maintenance Requirements.~~

~~(A) Before operating a State vehicle, the driver is responsible for checking to see that all necessary safety equipment and control devices are in good condition before he/she operates its. These items should include:~~

~~(i) Lights~~

~~(ii) Directional signals~~

~~(iii)Steering wheel~~

~~(iv) brakes~~

~~(v) Rear-view and Side-view mirrors~~

~~(vi) Horn~~

~~(vii) Tires~~

~~(viii) Safety belts~~

~~(ix) Windshield wipers~~

~~(x) Defroster~~

~~(B) For vehicles used to transport people, such as an activity bus or van, the following items in addition to those listed in (D) (1) should be checked for emergency use.~~

~~(i) Reflectors~~

~~(ii) Fire extinguisher, type B-C~~

~~(iii) First Aid Kit~~

~~(C) No State vehicle will be operated without a current State safety inspection sticker.~~

~~(4) Accident Reporting.~~

~~(A) Any State vehicle involved in an incident with a third party shall report the incident to his Agency Risk Management Coordinator or the State Risk Management Division not later than the next working day following the occurrence of the incident.~~

~~(B) employee or officer of the State who is involved in any incident, as a witness or otherwise, shall make any statement or comments, or execute any writing or documents concerning such incident, except as may be required by such employee's supervisor within such Agency, the State Risk Management Division or by statute.~~

(~~d~~b) **Investigation~~, record keeping and reporting~~.** The ~~Agency Risk Management Coordinator shall ensure~~ local

administrator or county director ensures that each liability incident ~~involving the property or personnel of the Agency~~ is promptly and thoroughly investigated to determine the circumstances surrounding the incident and to mitigate future hazards. The investigation ~~shall~~ includes, at a minimum~~, include~~:

(1) the identities of all possible claimants and all known witnesses, including each person's:

(A) full name;

(B) address;

(C) home and business telephone numbers;

(D) date of birth;

(E) Social Security number; and

(F) known or reported account of the incident, briefly summarized;

(2) a description of the ~~incident~~ occurrences that gave rise to the damages, including date, time, ~~and~~ location, and an estimate of the possible amount of damages~~.~~; and ~~The identification of involved parties or witnesses shall include full name, addresses, home and business telephone numbers, date of birth, social security number, and summaries of what is reported by each witness.~~

(3) photographs of the accident scene or property damage as close to the date and time of the liability incident as possible.

~~(1) When a hazardous condition exists that could result in a personal injury to individuals and/or damage to equipment or buildings the DHS Risk Management Coordinator is to immediately notify the appropriate administrator having jurisdiction over the area.~~

~~(2) The Agency Risk Management Coordinator shall keep orderly records of each investigation of any liability incident. The Agency Risk Management Coordinator shall also prepare and keep a monthly summary of all liability incidents, recording the date, names of possible claimants, nature of incidents, recording the date, names of possible claimants, nature of incident, nature of injuries, estimate of damages and date investigation completed. A unique identification number shall be assigned to each liability incident which may be used to specify the matter in any communications between the Agency Risk Management Coordinator and the Risk Manager.~~

~~(3) The Agency Risk Management Coordinator shall give telephone notice of any liability incident to the Risk Management Division of the Office of Public Affairs, telephone number 405-521-4999 not later than the next working day following the occurrence of any such incident. The Agency Risk Management Coordinator shall also fill out and sent to the Risk Management Division a "Standard Liability Incident Report" form furnished by the Risk Manager to all agencies, the "In Case of Accident" report and any other pertinent information to the Office of Public Affairs, Risk Management Division.~~

(c) **Claims.** Claims against OKDHS are investigated by the local administrator or county director and the Risk, Safety, and Emergency Management Unit to determine whether an employee or volunteer involved in a liability incident was on official state business.

(1) For the purpose of the Risk Management Program, the determination of whether an employee's or volunteer's actions are covered is at the sole discretion of the Department of Central Services (DCS) Risk Management Division. [OAC 580:25-5-1(a)(2)]

(2) DCS Risk Management Division makes the final determination of the disposition of any claims for damages against OKDHS.

(d) **Record keeping.** The OKDHS Risk, Safety, and Emergency Management Unit maintains records of all liability incidents.

340:2-15-5. ~~Local administrator's~~ Incident reporting responsibilities

~~Local administrators, including superintendents of DHS schools and institutions and the Chief Executive Officer of the Oklahoma Medical Center are responsible for ensuring that local responsibilities of the Risk Management Program are carried out. These duties include: Cooperating with the Risk management Coordinator directly or through designated staff as necessary to meet Risk Management goals, ascertaining that staff is aware of Risk Management rules and procedures through the posting of notices and through the provision of training in conjunction with the Risk Management Coordinator and the Staff Development Unit, and establishing local safety committees whose duties include detecting safety hazards and making recommendations for their elimination, and establishing local procedures to make certain that the DHS Risk Management Coordinator and the Risk Management Division of OPA are properly notified of~~ Any person, including employees and volunteers, must promptly report any liability incident or potential liability ~~incidents~~ incident in which they are involved or witness. Persons other than an employee or volunteer report the incident to a local Oklahoma Department of Human Services (OKDHS) employee.

(1) An employee or volunteer whose conduct or performance of duty gives rise to a liability incident, or who witnesses a liability incident, is required to cooperate in good faith with the defense of any claim arising out of the liability incident.

(2) Cooperation in good faith means not making statements, whether verbally or in writing, regarding the liability incident, except as required by OKDHS, authorized legal counsel, the Department of Central Services (DCS) Risk Management Division, or any law enforcement authority that investigates the liability incident at the scene.

340:2-15-6. Forms [REVOKED]

~~(a) The Office of Public Affairs requires that each agency formulate and adopt an "Agency Risk Management Procedures Manual" which reflects the rules and regulations of the OPA's Risk Management Division. The following sample forms are also included to fulfill the OPA's requirements:~~

~~(1) Adm-100, Drivers License and Liability Insurance Attestation~~

~~(2) Adm-46, Report and Review of Accidental Injury, and~~

~~(b) Unnumbered forms provided by the Office of Public Affairs~~

~~(1) Standard Liability Incident Reports (2)~~

~~(2) In Case of Accident~~

~~(3) Standard Inquiries Regarding Mowing, Snow Plowing & Salt Spreading Incidents~~

~~(4) Claimant's Report~~

~~(5) Release of All Claims~~

~~(6) Certificate of Self-Insurance.~~

340:2-15-7. Driver and motor vehicle safety and liability

(a) **Motor vehicle liability coverage.** For purposes of this Section, a motor vehicle is any vehicle licensed for road use.

(1) Department of Central Services (DCS) provides use of state vehicles and liability coverage for any state employee who operates a motor vehicle while in the scope of his or her employment and on official state business.

(2) DCS does not cover personal errands or other activities undertaken when the employee or volunteer is not within the scope of his or her employment nor on official state business. The employee assumes all liability while engaging in such activities.

(3) DCS Risk Management Division provides liability insurance for a state employee or volunteer deemed insurable. Any losses that involve an uninsurable employee or volunteer are borne by the Oklahoma Department of Human Services (OKDHS).

(4) DCS Risk Management Division checks information on an employee's or volunteer's Department of Public Safety records and notifies the OKDHS Support Services Division (SSD) Risk, Safety, and Emergency Management Unit risk manager whether DCS considers the person insurable.

(b) **Requirements for vehicles used to conduct OKDHS business.** Before an employee or volunteer may operate a motor vehicle while in the performance of official state business he or she must complete Form 23RS100E, Driver License and Liability Insurance Attestation.

(1) In order to operate a vehicle of any type, an employee or volunteer must:

(A) have and carry a valid driver license;

(B) observe all traffic laws and abide by all driving and vehicle safety standards;

(C) not allow an unauthorized person to operate the vehicle;

(D) operate the vehicle in a courteous manner at all times; and

(E) not consume alcoholic beverages or narcotics prior to or during operation of a vehicle.

(2) An employee or volunteer who operates a vehicle is required to report suspension or revocation of his or her driver license to the local administrator or county director.

(3) An employee or volunteer who is involved in two at-fault accidents within a 24 month period while acting as an agent of OKDHS is deemed uninsurable by DCS for a period of three months following the second accident.

(c) **Requirements for drivers of state owned vehicles.** Employees use state owned vehicles only for state business within the scope of the driver's employment and authority.

(1) An employee who operates a state owned vehicle complies with the requirements listed in (b)(1)(A) through (E) of this Section.

(2) An employee involved in a vehicle accident while functioning as an agent of OKDHS and in which the driver acted negligently and caused personal injury, property damage, or both, is required to attend and successfully complete a motor vehicle improvement (MVI) course.

(A) The MVI course is approved by the DCS Risk Management Division and must be attended within six months of the accident.

(B) DCS Risk Management Division deems the employee uninsurable until the successful completion of the MVI course.

(d) **Reporting vehicle liability incidents.** Any vehicle liability incident that involves a fatality, personal injury, or property damage is reported to the nearest law enforcement officer unless the operator is incapacitated. The operator remains at the scene until all acts required by law are completed unless the operator is prevented by injuries or other extenuating circumstances.

PART 3. HAZARD COMMUNICATION PROGRAM

340:2-15-25. Purpose

(a) The purpose of ~~this subchapter~~ the rules regarding the Hazard Communication Program is to ~~establish a process for continued compliance with the~~ ensure Oklahoma Department of Human Services (OKDHS) is in compliance with Occupational Safety and Health Administration (OSHA) rules at ~~Hazard Communication Standard [CFR 29~~ Section 1910.1200 of Title 29 of the Code of Federal Regulations~~], and the State of Oklahoma Hazard Communication Standard, pursuant to Title 40 O.S. § 401-424, at all affected facilities~~ by making employees and emergency first responders aware of chemicals they may encounter during the course and scope of their work.

(b) The OKDHS Support Services Division (SSD) Risk, Safety, and Emergency Management Unit is responsible for administering and managing the Hazard Communication Program.

340:2-15-26. Policy [REVOKED]

~~It shall be the policy of the Oklahoma Department of Human Services (DHS) to provide employees appropriate training and information on the safe handling and work practices associated with hazardous chemicals, materials and conditions that employees may be routinely exposed to in the work place.~~

340:2-15-27. Scope

~~This program affects all~~ The rules in this Part apply to all Oklahoma Department of Human Services (OKDHS) employees and ~~all~~ responding public officials, such as a police officer,

fireman, or any person acting in the role of an emergency first responder ~~who may, during the course of their employment, be exposed to hazardous chemicals, materials and/or conditions within DHS~~ within OKDHS facilities. A copy of these rules is made available upon request. These rules do not cover consumer products used in the manner that a consumer would use the product.

340:2-15-27.1. Definitions

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

"Chemical" means any element, chemical compound, or mixture of elements and/or compounds.

"Chemical name" means the scientific designation of a chemical or a name that clearly identifies the chemical for the purpose of conducting a hazard evaluation.

"Common name" means any designation or identification, such as trade name, brand name, or generic name used to identify a chemical other than by its chemical name.

"Exposure" or **"exposed"** means that an employee is subjected in the course of employment to a chemical that is a physical or health hazard at a level above that allowed by Section 1910 of Title 29 of the Code of Federal Regulations. It includes accidental or possible exposure by any route of entry such as inhalation, ingestion, skin contact, or absorption.

"Hazardous chemical" means any chemical that is a physical hazard or a health hazard.

"Health hazard" means chemicals for which there is statistically significant evidence based on at least one study conducted in accordance with established scientific principles that acute or chronic health effects may occur to exposed employees.

"Immediate use" means the hazardous chemical will be under the control of and used only by the person who transfers it from a labeled container and only within the work shift in which it is transferred.

"Material safety data sheet (MSDS)" means a document prepared by the supplier or manufacturer of a product clearly stating the:

(A) hazardous nature;
(B) ingredients;
(C) precautions to follow;
(D) health effects; and
(E) safe handling and storage information.

"Physical hazard" means a chemical for which there is scientifically valid evidence that is:

(A) a combustible liquid;
(B) a compressed gas, explosive or flammable;
(C) an organic peroxide; or
(D) an oxidizer, pyrophoric, unstable or water-reactive.

340:2-15-28. Elements of compliance

The ~~DHS~~ Oklahoma Department of Human Services (OKDHS) Hazard Communication Program ~~consists of the following~~ elements of compliance with Section 1910.1200 of Title 29 of the Code of Federal Regulations (CFR) are explained this Section.

(1) **Material safety data sheet (MSDS).** OKDHS requires the manufacturer or the supplier of a chemical product to furnish an MSDS for each chemical product before a purchase contract is awarded. The OKDHS Support Services Division (SSD) Risk, Safety, and Emergency Management Unit maintains the MSDS master list.

(~~1~~2) **Chemical inventory.** The ~~generation and annual maintenance of comprehensive Chemical Inventory Lists~~ Risk, Safety, and Emergency Management Unit maintains a current chemical inventory list (CIL) containing the common and trade names of all ~~"OSHA defined"~~ hazardous chemicals ~~identified at each DHS facility~~ present in the workplace. ~~The unit supervisor/administrator, or qualified designee, shall generate individual CIL segregated by those departments, units or clinics under his/her direction that use or store hazardous chemicals. Each individual CIL shall be alphabetized by product name and cross referenced to the appropriate chemical name for each hazardous substance or product listed on the CIL. Once the individual work area CIL is completed, a copy will be maintained in the individual work area for employee access, and the original shall be forwarded to the Risk Management Unit for the compilation of the DHS Facility's Master CIL.~~

(~~2~~3) **Workplace labeling.** ~~The unit supervisor/administrator, or qualified designee, shall identify and label all hazardous chemicals currently used or stored within those work areas under his/her direction.~~ Appropriate signs to warn of hazardous chemicals are required on buildings or structures, pipelines, containers, tanks, and vessels.

(A) Except as provided in (iii)(II)(III) and (IV) of this subparagraph, each container of hazardous materials in the workplace must be labeled, tagged, or marked with the chemical identity, appropriate hazard warning, and name and address of the manufacturer or other responsible party.

(i) All shipping containers containing hazardous chemicals must be labeled or placarded in accordance with Oklahoma Department of Transportation (ODOT) regulations. OKDHS shippers provide the MSDS to transport vehicle drivers upon request.

(ii) The labels on containers of hazardous substances that come into the work site must be inspected by the work site supervisor or qualified designee to ensure legibility.

(iii) In order to meet the Oklahoma Hazard Communication Standard found at OAC 580:45, the label affixed to a container by the manufacturer, importer, or distributor must:

(I) identify the hazardous chemical(s);

(II) display appropriate hazard warnings: may use words, pictures, or symbols as appropriate; and must be legible and in English;

(III) specify carcinogens and other regulated chemicals that require specific labeling

per Occupational Safety and Health Administration (OSHA) standards if present in concentrations greater than 0.1% of the total volume of a substance;

(IV) contain the name and address of the chemical manufacturer, importer, or other responsible party; and

(V) be prominently displayed.

(iv) If a label is missing or illegible, the hazardous chemical is not used in the work location until the supplier furnishes a replacement label.

(B) In lieu of labels, storage tanks such as bulk oxygen storage must display a Hazard Identification Table (HIT) number on a permanently affixed display device that provides employees and responding public officials a reference by which the vessel's contents and emergency response guide can be referenced from the U.S. Department of Transportation Emergency Response Guidebook.

(C) In compliance with the Oklahoma Hazard Communication Standard, OAC 380:45-5-5 for fire safety, OKDHS posts the appropriate sign, as approved by the Oklahoma Department of Labor (ODOL) Commissioner, identifying the locations and severity categories of hazardous chemicals deemed to be present in a significant amount. This is:

(i) any amount of the ODOT classified chemicals as:

(I) a class A explosive;

(II) a class B explosive;

(III) a class A poison;

(IV) a class B poison;

(V) a flammable solid designated as "hazardous when wet"; or

(VI) any radioactive material requiring a special license from the Nuclear Regulatory Agency; and

(ii) 55 gallons of liquid or 500 pounds of non-liquid hazardous chemical aggregately stored, placed or used within the workplace and where the numerical rating of the hazardous material results in a National Fire Protection Agency (NFPA) 704 Hazard Identification System rating of:

(I) two or greater health hazard;

(II) two or greater flammability hazard; or

(III) one or greater reactivity hazard.

~~(3) The unit supervisor/administrator, or qualified designee, shall review all newly purchased hazardous chemicals that enter those work areas under his/her direction to ensure that the appropriate hazard labels are prominently and properly displaced, and that these labels are not removed or defaced.~~

(4) **Contractors.** ~~The unit supervisor/administrator, or qualified designee, shall collect and compile the requisite Material Safety Data Sheets (MSDS) for those hazardous chemicals that are listed on the individual work area CIL.~~ Construction contractors are asked to inform OKDHS of any hazardous chemicals that will be used in a project and the contractor is informed by OKDHS of any hazardous chemicals they may come into contact with during the OKDHS construction process. Non-construction contractors are required by OKDHS to supply the MSDS for chemicals that could result in OKDHS employee exposure.

~~(5) The unit supervisor/administrator, or qualified designee, shall provide access to written records and information regarding hazardous chemicals, materials and/or conditions within the work place no later than one day after a request for access is made, and within 15 days after a request for a hard copy of relevant records or information is made.~~

(~~6~~5) **Hazard Communication Program plan.** The ~~DHS Master~~ OKDHS Hazard Communication Program ~~Manual will be~~ plan is maintained in the ~~DHS~~ Risk, Safety, and Emergency Management Unit~~, and~~. The plan is available for review upon written request by an affected employee, employee representative, ~~vendor/contractor~~ vendor, contractor, responding public official, or authority having jurisdiction.

~~(7) The Risk Management Unit, unit supervisors/administrators, or their qualified designees, shall provide necessary training to all affected employees in regard to exposure to physical or health hazards in the work place.~~

~~(8) The unit supervisor/administrator, or qualified designee, shall provide relevant MSDS to those vendors or contractors that perform services for DHS and request to review these documents.~~

~~(9) The Risk Management Unit shall disseminate copies of the DHS Hazard Communication Program Manual and relevant MSDS to all DHS facilities as well as those responding public officials within the appropriate county per the Oklahoma Hazard Communication Standard, Rule IV for Fire Safety, and to the State of Oklahoma Department of Civil Defense.~~

(6) **Hazard Communication Program plan revisions.** The Hazard Communication Program plan is reviewed and updated at least annually and as necessary to reflect new or modified tasks, procedures, exposures, or rule changes. The Risk, Safety, and Emergency Management Unit maintains documentation of the review.

340:2-15-29. Responsibility [REVOKED]

~~The DHS Risk Management Unit accepts the responsibility for ensuring compliance with the State of Oklahoma Hazard Communication Standard by:~~

~~(1) Executing and enforcing the Hazard Communication Program;~~

~~(2) Identifying key personnel involved in the program;~~

~~(3) Completing and maintaining a comprehensive CIL for each DHS facility;~~

~~(4) Obtaining, compiling and indexing the necessary MSDS for all substances listed on the CIL;~~

~~(5) Assuring the availability and accuracy of required labels on containers;~~

~~(6) Developing, implementing and evaluating an employee hazard communication training program;~~

~~(7) Providing vendors/contractors access to the DHS Hazard Communication Program Manual; and~~

~~(8) Disseminating the DHS Hazard Communication Program to all DHS facilities and responding public officials.~~

340:2-15-30. Unit supervisor/administrator responsibility [REVOKED]

~~(a) Compliance with and enforcement of the DHS Hazard Communication Program for the employees under their direction;~~

~~(b) Completing and maintaining the necessary comprehensive CIL for employees under their direction;~~

~~(c) Assuring the availability and maintenance of relevant MSDS for employees under their direction;~~

~~(d) Assuring the availability and accuracy of required labels or placards on containers;~~

~~(e) Providing appropriate training and information to employees under their direction; and~~

~~(f) Providing vendors/contractors copies of relevant MSDS for the safe conduct of work.~~

340:2-15-31. Employee responsibility [REVOKED]

~~(a) Complying with the DHS Hazard Communication Program;~~

~~(b) Performing their jobs in accordance with standard criteria communicated during training and educational programs; and~~

~~(c) Notifying their supervisor immediately in the event of expose to any potentially hazardous substance or agent covered under the Oklahoma Hazard Communication Standard.~~

340:2-15-32. Material safety data sheets [REVOKED]

~~Material Safety Data Sheets (MSDS) provide a mechanism for presenting a great deal of physical and chemical data in an organized manner. The MSDS provide a resource that employees may refer to as needed and serves as a reference for those supervisors who are charged with the safety, education and training of their employees. As of November 25, 1985, all chemical manufacturers and distributors that produce hazardous chemicals are required by law to furnish MSDS to the proprietor of any location where hazardous substances are used.~~

~~(1) A MSDS shall be maintained at the work site on every non-exempt hazardous chemical to which an employee may be exposed. This hazardous substance may either be brought into or created as an intermediate or final product at the work site.~~

~~(A) A MSDS will be maintained in the "ORANGE" Hazard Communication Manual for each hazardous substance listed in the specific CIL prepared for each DHS facility. In order to obtain the requisite MSDS from chemical manufacturers, importers or distributors, a standard "DHS Access Clause for Purchase Contract" has been drafted to accompany all Purchase Requisitions and Invitations to Bid for hazardous consumer products. In some cases, a manufacturer may not provide the requested MSDS, may no longer be in business, or simply may not have created MSDS for their products. Therefore, for all chemical substances listed in the departmental specific CIL of which no MSDS could be obtained, the department supervisor, with the assistance of the Risk Management Unit, will develop and maintain an MSDS for that substance.~~

~~(B) All MSDS, either received with a chemical shipment or separately, shall be forwarded to the Risk Management Unit for review and approval prior to distribution to all affected departmental users.~~

~~(C) The unit supervisors/administrators will ensure that all approved MSDS are filed in the appropriate "ORANGE" Hazard Communication Manual.~~

~~(D) A temporary MSDS Surrogate Statement, signed by the Risk Manager, listing any significant safety and health hazards of a substance may be substituted for a MSDS under review and pending final release of the manufacturer's MSDS.~~

~~(i) The unit supervisor/administrator is responsible for ensuring that the Risk Management approved MSDS, or surrogate statement has been placed in the "ORANGE" Hazard Communication Manual before any hazardous chemical is used at the work site.~~

~~(ii) No temporary statement will be valid for more than 30 days after which time the hazardous chemical will be removed from the work site until a valid MSDS can be obtained.~~

~~(2) When new and significant health information is obtained from the manufacturer concerning a hazardous chemical in the work place, the new MSDS shall be reviewed by the Risk Management Unit with 30 days. After review and approval, the revised MSDS will be distributed immediately to all affected departmental users for inclusion into the "ORANGE" Hazard Communication Manual.~~

~~(3) It is the responsibility of unit supervisors/administrators to request copies of MSDS for those hazardous chemicals used within work sites under their direction, and in which there is currently no MSDS on file in the "ORANGE" Hazard Communication Manual. Unit supervisors/administrators shall make a formal request for MSDS to the Risk Management Unit on the official Material Safety Data Sheet Copy Request.~~

~~(4) Research laboratories are required to have a MSDS for every "hazardous chemical" found in the laboratory facility. The laboratory supervisor is responsible for ensuring that all MSDS are preserved, filed in the appropriate "ORANGE" Hazard Communication Manual, and available in the work place for all affected laboratory employees. If the laboratory supervisor determines that hazardous chemicals or mixtures are being created and stored within the laboratory, a MSDS will be prepared for each substance with the assistance of the Risk Management Unit. Preparation of MSDS may not be necessary if the chemist~~

~~or laboratory technician retains sole custody of the material in such a manner as to prevent exposure to other persons. The Risk Manager will make this determination.~~

~~(5) Prepared MSDS will be placed in the "ORANGE" Hazard Communication Manual with other acquired MDSD, but, if prudent, may be treated as a "trade secret" material, listing only "A" name and the hazardous properties and symptoms of exposure associated with that material. Certain chemical identifies may be withheld from a MSDS in accordance with regulations set forth by the Oklahoma Hazard Communication Standard, Rule VI for Trade Secret Information. In all cases, MSDS will detail the hazardous properties and symptoms of exposure associated with such chemicals and will be treated as any other MSDS. Questions regarding Trade Secret Information will be referred to the Risk Management Unit.~~

340:2-15-33. Work place labeling [REVOKED]

~~The following procedures ensure that all employees and responding public officials will be aware of hazardous chemicals within the work place, to include: pipelines, containers, tanks, vessels, buildings or structures.~~

~~(1) Except as provided in (C)(ii)(iii) and (iv) of this paragraph, each container of hazardous materials must be labeled, tagged or marked with the chemical identity, appropriate hazard warning, and name and address of the manufacturer or other responsible party. Work area supervisors are responsible for ensuring that all containers of hazardous chemicals within or leaving their respective work sites are adequately labeled or placarded.~~

~~(A) All shipping containers containing hazardous chemicals must be labeled or placarded in accordance with Department of Transportation regulations. DHS shippers will provide MSDS to transport vehicle drivers upon request.~~

~~(B) The labels on containers of hazardous substances which come into the work site must be inspected by the work site supervisor or qualified designee to ensure legibility.~~

~~(C) In order to meet the State Hazard Communication Standard, the label affixed to a container by the manufacturer, importer or distributor will meet the following minimum requirements:~~

~~(i) Identity of the hazardous chemical(s),~~

~~(ii) Display appropriate hazard warnings:~~

~~(I) May use words, pictures or symbols as appropriate,~~

~~(II) Must be legible and in English,~~

~~(iii) Carcinogens and other regulated chemicals require specific labeling per OSHA standards if present in concentrations greater than 0.1% of the total volume of a substance,~~

~~(iv) Contain the name and address of the chemical manufacturer, importer or other responsible party, and~~

~~(v) Be prominently displayed.~~

~~(D) If a label is missing or illegible, the supervisor of the work site receiving the chemical is responsible for obtaining and affixing a replacement label.~~

~~(i) A temporary label may be prepared by the Risk Management Unit pending receipt of the manufacturer's label, provided sufficient information is available. Such a temporary label will be affixed by the work site supervisor or designee who will also inform employees in the work site of any specific hazards.~~

~~(ii) If no temporary or permanent label can be affixed within three days of receipt, the hazardous chemical will be removed from the work site and stored in a safe place pending disposition.~~

~~(2) In lieu of labels, storage tanks such as bulk oxygen storage will display a Hazard Identification Table (HIT) number on a permanently affixed display device that provides employees and responding public officials a reference by which the vessel's contents and emergency response guide can be referenced from the U.S. Department of Transportation's Emergency Response Guidebook (DOT P 5800.3). Unit supervisors/administrators are responsible for ensuring that the appropriate HIT number is legible displayed on each storage tank requiring this method of hazard identification and that a current copy of the DPT P 5800.3, Emergency Response Guidebook, is maintained in the work place at all times.~~

~~(3) All hazardous chemicals in the research laboratories require warning labels. Laboratory supervisors are responsible for ensuring that warning labels on incoming containers of hazardous chemicals are not removed or defaced. Laboratory supervisors will also ensure that containers of hazardous chemicals shipped from the laboratory are appropriately labeled.~~

~~(A) Portable containers, such as individual sample bottles, need not be labeled if the chemicals are transferred from labeled containers, remain in the sole custody of the employee who performs the transfer, and is intended for immediate use by that employee during his/her work shift. Any quantity of hazardous chemical remaining in a portable container at the end of the user employee's work shift must be returned to the original labeled container prior to shift change.~~

~~(B) Where the laboratory supervisor deems it necessary to have warning labels on containers of hazardous materials not previously labeled, he/she should request a label from the manufacturer/distributor or should seek assistance from the Risk Management Unit in generating such a label.~~

~~(4) In compliance with the Oklahoma Hazard Communication Standard, Rule IV for Fire Safety, the DHS will post the appropriate sign, as approved by the Commissioner of Labor, identifying the locations and severity categories of those hazardous chemicals deemed to be of a "significant amount" as follows:~~

~~(A) Any amount of the following DOT classified chemicals:~~

~~(i) A Class (A) explosive,~~

~~(ii) A class (B) explosive,~~

~~(iii) A class (A) poison,~~

~~(iv) A class (B) poison,~~

~~(v) A flammable solid designated as "hazardous when wet", or~~

~~(vi) Any radioactive material requiring a special license from the Nuclear Regulatory Agency.~~

~~(B) Fifty five gallons of liquid or 500 pounds of non liquid hazardous chemical aggregately stored, placed or used within the work place and where the numerical rating of the hazardous material results in a NFPA 704 system rating of:~~

~~(i) Two or greater health hazard,~~

~~(ii) Two or greater Flammability Hazard, or~~

~~(iii) One or greater Reactivity Hazard.~~

APPENDIX L. ACCESS CLAUSE FOR PURCHASE CONTRACT [REVOKED]

To the extent required by regulations promulgated by the Occupational Safety and Health Administration (OSHA), pursuant to the CFR 29 1910.1200 Hazard Communication Standard, the successful vendor shall supply their most current, accurate, and legible Material Safety Data Sheet (MSDS) for every "hazardous chemical product" provided.

Any chemical not specified exempt as a "hazardous chemical" by OSHA definition and listed for purchase on a Purchase Requisition or Invitation to Bid, must be accompanied by the appropriate MSDS for that specified "hazardous chemical product".

All requisite MSDS must be forwarded to:

Department of Human Services
Contracts/Facilities Division
Risk Management Unit
Room B-4, Sequoyah Building
Oklahoma City, Oklahoma 73125
405-521-4909

APPENDIX M. MATERIAL SAFETY DATA SHEET SURROGATE STATEMENT [REVOKED]

Pending the receipt of the manufacturers Material Safety Data Sheet, the following significant safety and health hazards are known to exist with the use of this substance:

Product Name: _____

Manufacturer's Name: _____

Manufacturer's Address: _____

Manufacturer's Phone Number: (____)_____

Health Hazard Rating: _____

Fire Hazard Rating: _____

Reactivity Hazard Rating: _____

Other Hazards: _____

_____

Special Protection Indicated: _____

_____

Special Precautions Indicated: _____

_____

This temporary statement is valid for no more than 30 days from the date of issue, after which if no MSDS is available, the hazardous substance must be removed from services.

Signed: _____

Risk Manager,
Oklahoma Department of Human Services

Date of Issue: _____

[OAR Docket #06-1042; filed 5-23-06]

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

[OAR Docket #06-1044]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 35. Volunteer Services
340:2-35-4
(Reference APA WF#06-06)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Sections 683.25 et seq. of Title 63 of the Oklahoma Statutes.
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March 28, 2006
Submitted to House:
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Submitted to Senate:
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Legislative approval:
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The permanent rule revision corrects the title of the background check for volunteers to reflect Child Abuse and Neglect Information System (CANIS).
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 13, 2006:

SUBCHAPTER 35. *VOLUNTEER SERVICES*

340:2-35-4. Requirements for volunteers

(a) **General.** To protect the rights of clients and volunteers and to properly integrate volunteers into the Oklahoma Department of Human Services (OKDHS) service systems, volunteers are required to:

(1) be at least 18 years of age and demonstrate an interest in and a concern for the needs of others;

(2) attend an orientation and training session outlining the various OKDHS programs and services;

(3) agree to the confidentiality requirement on all cases and agree to follow OKDHS rules;

(4) carry Form VOL-1, Volunteer Identification Card, while on duty; and

(5) have adequate automobile liability insurance~~, current vehicle inspection,~~ and valid driver's license if transporting clients.

(b) **Individual volunteers.** An extensive screening process is required for prospective volunteers recruited for direct care services to OKDHS clients.

(1) This process includes entrance and placement interviews and the completion of Forms:

(A) VOL-3, Volunteer Agreement;

(B) VOL-5, Application for Volunteer Service;

(C) VOL-7, Volunteer Reference Letter, as required; and

(D) VOL-9, Volunteer Interview Report.

(2) Before placement, volunteers in direct care service must have a background check through the ~~Central~~ Child Abuse ~~Registry~~ and Neglect Information System (CANIS), Oklahoma State Bureau of Investigation (OSBI), Department of Public Safety, and other applicable background checks.

(3) Screening requirements are less restrictive for volunteers who will not be placed in one-on-one relationships with OKDHS clients.

(4) ~~Forms VOL 3 and VOL 5 must be signed by the volunteer and kept on file in the local office.~~ Form VOL-1 is issued to the volunteer at the time of certification by the local office.

(c) **Volunteer groups.** In situations where a group of individuals volunteer their services for a group project such as Boy Scouts, a high school class, or military group, the minimum age requirement may be waived.

(1) The person responsible for supervising the group must be an approved volunteer. ~~These projects may include money raising activities, mowing clients' lawns, repairing clients' homes, or similar projects.~~

(2) It is not necessary for each individual member of a volunteer group to complete Form VOL-5. The person responsible for the group signs Form VOL-2, Volunteer Group Agreement, and attests for all the group members who participate.

(3) The group must be approved as a OKDHS volunteer group by the volunteer coordinator.

[OAR Docket #06-1044; filed 5-23-06]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 5. ADULT PROTECTIVE SERVICES

[OAR Docket #06-1046]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Investigation of Adult Protective Services Referrals
340:5-5-3 [AMENDED]
(Reference APA WF 06-05)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and Title 43A of the Oklahoma Statutes.
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None requested
Adoption:
March 28, 2006
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Legislative approval:
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August 1, 2006
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Adult Protective Services (APS) permanent rule revisions change the completion time frame for an APS investigation from 30 calendar days to 60 calendar days to provide consistency between Oklahoma Department of Human Services programs while still providing for immediate needs of APS clients to be addressed timely.
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 AUGUST 1, 2006:

SUBCHAPTER 5. INVESTIGATION OF ADULT PROTECTIVE SERVICES REFERRALS

340:5-5-3. Elements of an investigation

Although the investigation process may vary depending on the initial allegations and other factors, all Adult Protective Services (APS) investigations include paragraphs (1) through (10).

(1) **Notification of local law enforcement.** Local law enforcement is provided notification of all APS referrals assigned for investigation.

(2) **Efforts to locate and notify others.** APS specialists must make every reasonable effort to locate and notify the vulnerable adult's caretaker, guardian, and next of kin.

(3) **Visits to and interviews with the vulnerable adult.** Each APS investigation includes at least one visit and private interview with the vulnerable adult, and may include as many as are necessary to reach a conclusion and determine what, if any, protective services are needed.

(4) **Consultation with others.** Other people who have or can reasonably be expected to have pertinent knowledge about the alleged victim's (AV's) circumstances are interviewed during the investigation, including any alleged perpetrator of maltreatment.

(A) This consultation includes medical, psychiatric, or other evaluations as necessary to assist in the determination of a vulnerable adult's decision-making capacity and need for services.

(B) The AV's permission is not required for these contacts.

(5) **Photographs.** The APS specialist may take still photographs or video recordings to document injuries to the vulnerable adult, or conditions in the adult's residential environment which have resulted or may result in an injury or serious harm to the adult.

(6) **Other relevant data.** The APS specialist collects any data relevant to the situation being investigated, including records, to arrive at a finding on the referral. If the APS specialist is denied access to pertinent records, documentation, or other information relevant to the investigation, the Oklahoma Department of Human Services (OKDHS) may petition the court for an order allowing access.

(7) **Determining the adult's decision-making capacity.** OKDHS is mandated by Section 10-106.C of Title 43A of the Oklahoma Statutes to determine a vulnerable adult's capacity to consent to receive services, especially with regard to the need for involuntary services. Each investigation includes an evaluation of the vulnerable adult's decision-making capacity.

(A) Information is obtained from medical or psychiatric sources, if available, to assist in the determination. In making this determination, the APS specialist assesses and considers:

(i) the client's short and long term memory;

(ii) the client's ability to plan and execute a plan;

(iii) the client's ability to recognize risk factors;

(iv) denial of problems by client or caretaker;

(v) the client's ability to understand and follow directions;

(vi) indicators of affective disorders such as depression or bipolar disorder; and

(vii) indicators of substance abuse, dementia, delirium, psychosis, traumatic brain injury, uncharacteristic socially inappropriate behaviors, impaired decision-making, and other factors.

(B) The APS specialist's assessment of a client's mental capacity to consent to protective services takes into account the client's awareness of:

(i) the limitations and deficiencies in the physical environment;

(ii) the client's own physical or mental limitations;

(iii) resources available to assist in meeting the client's needs; and

(iv) the consequences to the client if nothing is done to improve the situation.

(C) If a client is deficient in all or most of the areas in (B) of this paragraph, he or she may lack the capacity to consent to protective services and it may be appropriate to petition the district court for an order authorizing the provision of needed services.

(D) If a client expresses awareness of all four areas in (B) of this paragraph, it is likely that the present circumstances are the client's choice, though in some cases a client might express awareness in these areas and still lack the capacity to consent to provision of services.

(E) If a client appears unaware of the consequences of the present situation, and an emergency exists, legal intervention is appropriate.

(8) **Evaluation to determine the need for protective services.** The evaluation consists of the APS specialist's analysis and consultation with the supervisor of all evidence gathered during the initial phases of the investigation. The evaluation includes consideration of whether:

(A) the vulnerable adult needs protective services. If so, the need for protective services is documented in a statement that includes the least restrictive services that will meet the person's needs;

(B) services that are identified as needed are available through OKDHS or in the community, and the sources and manner in which they can be provided. Options are explored with the vulnerable adult;

(C) the vulnerable adult is capable and willing to obtain services for himself or herself;

(D) the vulnerable adult can pay for needed services or is eligible for public assistance programs;

(E) a caretaker or guardian is willing to provide or agree to the provision of needed services; and

(F) the vulnerable adult desires the services.

(9) **Completion of ~~investigation~~ investigative report.** The APS specialist ~~determines~~, within:

(A) 30 calendar days ~~of receipt~~ of the ~~referral, whether the evidence indicates the referral~~ date the report is received, completes necessary interviews and assessments including identification of any immediate service needs; and

(B) 30 calendar days of the date the report is received when the allegation involves self-neglect:

(i) completes all final documentation;

(ii) submits a report to the local district attorney; and

(iii) makes a determination of substantiated or unsubstantiated based on the definitions of terms in OAC 340:5-1-6~~.~~; or

(C) 60 calendar days of the date the report is received when the allegation involves a third party perpetrator:

(i) completes all final documentation;

(ii) submits a report to the local district attorney; and

(iii) makes a determination of substantiated or unsubstantiated based on the definitions of terms in OAC 340:5-1-6.

(10) **Follow-up.** The APS specialist, in consultation with the APS supervisor, is responsible for determining what follow-up is needed in each case investigated.

(A) On cases not requiring court-ordered involuntary services, follow-up needs are determined on a case-by-case basis.

(i) If the supervisor and APS specialist determine no follow-up is necessary, that decision and the reasons for it are documented in the case record.

(ii) If the supervisor and APS specialist determine follow-up is necessary, that decision and the reasons for it are documented in the case record, along with the plan for completing follow-up, the findings of the follow-up, and any action necessary in response to those findings.

(B) When the contact is made by phone or other means than face-to-face visit, supervisory approval of the means of contact is documented in the case record, along with the reasons justifying contact other than face-to-face.

(C) For referrals that resulted in a client receiving involuntary services, OKDHS is responsible for assuring basic needs for safety and security are met as required by the court. The APS specialist monitors the delivery of court-ordered protective services and continues to assess the need for additional services determined by the changing needs of the client. At least one follow-up visit is made at 30 days regardless of whether OKDHS continues to hold temporary guardianship.

(i) If the client's situation is stable or improving after 30 days and OKDHS no longer holds guardianship, the case is closed.

(ii) If OKDHS continues to hold guardianship after 30 days, a follow-up visit to the client is required at least once each 30 days for the duration of the temporary guardianship.

(iii) If the client's situation is deteriorating at any time during the follow-up period, the service plan is reassessed and changed as needed with the concurrence of the court.

(iv) Follow-up visits to clients receiving involuntary services may be made as often as needed to comply with APS specialist guardianship responsibilities and to monitor the client's situation.

(v) If an out-of-home placement is used as a temporary or long term solution to identified needs, the APS specialist has regular contact with the client for the duration of the court ordered temporary guardianship. The frequency of this contact is determined by the APS specialist and supervisor's determination of the specific client situation and the availability of an independent objective third party to provide follow-up and notification to the APS specialist. Visits to the client are made at least once every 30 days while the client is under APS guardianship. Information from follow-up visits is documented in the case record and made available to the court on review of the guardianship. Follow-up visits may be made as frequently as the APS specialist and supervisor determine they are needed, based on an individual client's situation. For clients placed:

(I) in medical facilities such as geriatric psychiatric units or medical hospital for care, the worker follows-up with the client's assigned social worker;

(II) in group homes, residential care facilities, and assisted living centers, the APS specialist may contact other professionals not associated with the facility who provide treatment or services to the client for follow-up information every 30 days or more often as indicated;

(III) at any facility owned or operated by OKDHS, face-to face-visits are made every 30 days with interim contacts with the social work staff or more often as indicated; and

(IV) at any type of nursing home, the APS specialist visits the client, at least once every two weeks during the first month of placement to check for changes in the client's condition, such as injuries, signs of over-medication, and cognitive state. Concerns are discussed with the nursing home administrator or director of nursing, and the APS supervisor. After the first month, the APS specialist visits the client at least once every 30 days, reviews the nursing home charts and incident reports, and discusses care needs with the staff and client's family, if available.

(D) The APS specialist may determine as a result of follow-up contacts that further placement options need exploring. This may be the result of inappropriate action on the part of the provider, current information about the facility's ability to provide care for the client, or the facility's request to relocate the client. Placement alternatives are determined in accordance with this Section and approved by the supervisor, county director, and the area APS field liaison. The court appointed attorney for the client and the family is notified of the problems and alternatives that have been developed. A written report of the change of placement is submitted to the court, with a copy of the motion to the client's family and attorney of record.

(E) Follow-up contact with clients remaining at home in temporary guardianship is made frequently with a minimum of every 30 days to assure that client safety and needs are being met by the established service plan. Modifications are made as needed to the service plan as well as provision of services by providers. The quality of care and the method of contact are evaluated on a case-by-case basis depending on the individual needs of the specific client including a face-to-face visit every 30 days. Reports are submitted at the request of the court or a minimum of every 30 days.

(F) In the event the client is placed in a facility out-of-county, the APS supervisor or designee immediately contacts the APS supervisor in the county of placement to notify the receiving county of the placement and that follow-up activities pursuant to this paragraph must be provided by the receiving county.

(i) The APS specialist in the county where the client is residing is the worker designated to provide follow-up services for temporary guardianship cases. That APS specialist documents contacts and required information as set forth in this subparagraph and sends it to the county of jurisdiction once a month.

(ii) The resident county APS specialist is responsible for all issues that require written consent and other problems or concerns and acts in coordination with the APS specialist in the county of court jurisdiction for reporting to the court as required by the court order with a minimum of every 30 days. All actions are discussed with APS specialist in the county of court jurisdiction.

(iii) The APS specialists and supervisors from both counties discuss and determine the best course of action for renewals of temporary guardianships.

(I) The decision takes into account, the client's specific situation, the family and their desires, the availability of the courts in the two counties, and the advice of the client's court appointed attorney, and the attorney(s) representing OKDHS in the matter.

(II) The area APS field liaison, State Office APS, and attorneys for the OKDHS Legal Division are consulted as needed for assistance in determining the best course of action.

[OAR Docket #06-1046; filed 5-23-06]

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

[OAR Docket #06-1048]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Financial Eligibility Criteria
Part 3. Income
340:50-7-31 [AMENDED]
Part 5. Determination of Income ~~and Deductions~~
340:50-7-49 through 340:50-7-53 [REVOKED]
(Reference APA WF# 06-04)
AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3, and 4 of the Oklahoma Constitution; and Section 273.9 of Title 7 of the Code of Federal Regulations.
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None requested
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Failure of the Legislature to disapprove the rule(s) resulted in approval on May 23, 2006.
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SUPERSEDED EMERGENCY ACTIONS:
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n/a
ANALYSIS:
Food Stamp Program permanent rule revisions: (1) clarify deductible expenses; (2) revoke obsolete rules; (3) move rules to a more logical location; (4) remove out dated language; and (5) clarify language that is vague or confusing.
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 AUGUST 1, 2006:

SUBCHAPTER 7. FINANCIAL ELIGIBILITY CRITERIA

PART 5. DETERMINATION OF INCOME AND DEDUCTIONS

340:50-7-31. Deductions

(a) ~~Deductions~~ Deductible expenses from income ~~are allowed for the expenses listed in paragraphs (1) through (6) of this subsection~~ include only certain costs of dependent care, shelter, the earned income allowance, a standard deduction, certain medical costs for elderly or disabled household members, and legally binding child support payments as described in this Subchapter.

(1) That portion of the household's allowable shelter and dependent care expenses, which are either paid by or billed to a disqualified household member, as defined by OAC 340:50-7-29(c)(2), is divided evenly among the household members, including the disqualified member. ~~When the household is using the utility standard, it is also evenly prorated.~~ All except the disqualified member's share is considered as a deductible shelter expense for the remaining household members.

(2) When the household is using the utility standard, it is also evenly prorated.

(3) Business expenses for the self-employed are handled in accordance with OAC 340:50-7-30.

(b) Deductions from income are allowed for the expenses listed in paragraphs (1) through (6) of this subsection.

(1) **Standard deduction.** The appropriate standard deduction as shown in Oklahoma Department of Human Services (OKDHS) Appendix C-3, Maximum ~~Coupon~~ Food Stamp Allotments and Standards for Deductions, Maximum Income and Utilities ~~(Food Stamps)~~, is deducted from the household's income.

(2) **Earned income deduction.** The appropriate amount of earned income deduction from OKDHS Appendix C-3 is deducted from the gross earned income to cover the cost of state and local income taxes, pensions, union dues, and work related expenses. 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. No other deduction is allowed from the gross earned income.

(3) **Medical expense deduction.** Medical expenses exceeding $35 per month incurred by any elderly or disabled household members are deductible. The $35 is subtracted from medical expenses only once per household even though the household has more than one elderly or disabled member. When the household does not know the amount of on-going medical expenses that can be anticipated monthly over the certification period, the anticipated expense amount may be determined by averaging at least the past two month's expenses.

(A) Households report and verify medical expenses at certification and each recertification. Households are not required to report changes in medical expenses during the certification period. When a household voluntarily reports a change in medical expenses that will reduce the food stamp allotment, no verification is needed. However, the change does require notice of adverse action. When a household voluntarily reports a change in medical expenses that will increase the food stamp allotment, the change must be verified

before the change is made. If OKDHS finds out about a change from a source other than the household, the change is acted on if it is considered verified upon receipt. The household is not contacted for additional information. When the change requires contacting the household for additional information or verification, no change is made.

(B) If a household reports an anticipated medical expense at the time of certification, but is unable to provide the verification at that time, the household is told the expense will be allowed when the verification is provided during the certification period. Upon verification, a household may elect to have a one-time medical deduction or have the expense averaged over the remaining months of the certification period. Allowable costs are:

(i) medical and dental care, including psychotherapy and rehabilitation services provided by a licensed practitioner authorized by state law or other qualified health professional;

(ii) hospitalization or outpatient treatment, nursing care, and nursing home care, including payments by the household for an individual who was a household member immediately prior to entering a hospital or nursing home provided by a facility recognized by the state;

(iii) prescription drugs and other over-the-counter medication, including insulin, when approved by a licensed practitioner or other qualified health professional. Costs of medical supplies, sick-room equipment, including rentals, or other prescribed equipment are also included;

(iv) health and hospitalization policy premiums;

(v) Medicare premiums, and any cost-sharing or spend-down expenses incurred by Medicare or Medicaid recipients;

(vi) dentures, hearing aids, and prosthetics;

(vii) eye glasses prescribed by a licensed practitioner, and securing and maintaining a seeing eye or hearing dog, including the cost of dog food and veterinarian bills;

(viii) reasonable cost of transportation and lodging to obtain medical treatment or services; and

(ix) maintaining an attendant, homemaker, home health aide, child care services, or housekeeper due to age, infirmity, or illness. If this expense also qualifies as a dependent care expense as described in paragraph (4) of this subsection, it is considered as a medical expense rather than a dependent care expense. Additionally, if the household furnishes a majority of the caretaker's meals, an amount equal to one allotment is added to the medical expense for meals provided. The allotment used is the amount in effect at certification.

(C) Cost for special diets or health and accident insurance policies such as those payable in lump sum settlements for death or dismemberment, or income maintenance policies such as those that continue mortgage or loan payments while the beneficiary is disabled are **not** allowable medical costs. The worker must verify the amount of any deductible medical expenses. Verification of other factors, such as the allowability of services provided or the eligibility of the person incurring the cost, is required only if questionable.

(4) **Dependent care.** Dependent care is payment for the actual cost for the care of a child or other dependent when necessary for a household member to seek, accept, or continue employment or to attend training or education preparatory to employment. This deduction is applicable whether or not the household member is subject to the Food Stamp Employment and Training requirements. If this expense also qualifies as a medical expense, it is considered as a medical expense rather than a dependent care expense. See OKDHS Appendix C-3 for the maximum dependent care deduction allowable. Dependent care is only verified when the expenses claimed would actually result in a deduction and other information available to the worker is inconsistent with the household's claim that it incurs a dependent care expense or that the household incurs the expense for reasons of employment, seeking employment or training, or education for employment.

(5) **Legally-binding child support.** A deduction is allowed for verified legally-binding child support payments paid by a household member to or for a non-household member, including payments made to a third party on behalf of the non-household member.

(6) **Shelter costs.** A deduction is made for monthly shelter cost in excess of 50% of the household's income after all of the deductions are allowed. The shelter deduction alone cannot exceed the maximum amount as shown in OKDHS Appendix C-3, unless the household has an elderly or disabled member. Households with an elderly or disabled member receive an excess shelter deduction for the monthly cost that exceeds 50% of the household's income after all of the deductions listed in paragraphs (1) through (6) of this subsection have been allowed. All homeless households who incur or can expect to incur a shelter cost during the month are entitled to use the estimated homeless shelter deduction to determine food stamp eligibility and benefit level. This estimate covers all shelter costs as described in this paragraph. If a homeless household is living in a vehicle for which they are making payments, the monthly payment may be allowed as a shelter cost. If the household's actual verified shelter cost exceeds the estimated amount, the larger amount is used. Shelter costs include only:

(A) continuing charges for the shelter occupied by the household, including rent, mortgage, or other continuing charges leading to the ownership of the shelter, such as loan repayments for the purchase of a mobile home, including interest on such payments. The charge for renting or buying the land on which a mobile home is located is also considered shelter cost;

(B) property taxes, state and local assessments, and insurance on the structure itself except the separate costs for insuring furniture or personal belongings. The cost of vehicle registration or tag for a mobile or motor home is not a shelter expense. A mobile home is taxed as part of the property tax when the land is owned or being purchased. This is considered as a shelter expense. Unregistered mobile homes on rented land are taxed as personal property. The personal property tax for the mobile home is considered a shelter expense. No other personal property tax is considered a shelter expense;

(C) charges for heating, cooling, or cooking fuel; electricity; water, sewage, garbage, and trash collection fees; and the basic service fee for one telephone including tax on the basic fee. A household that incurs an allowable utility expense receives the total amount of the utility standard specified in OKDHS Appendix C-3 for one of the mandatory utility standards in (i) through (iii) of this subparagraph.

(i) The standard utility allowance (SUA) is a single standard based on annual averages that include costs for heating, cooling, and cooking fuel; electricity; basic telephone service; and water, sewage, and garbage.

(I) The SUA may be used as long as the household is billed for heating or cooling during the year. Households billed less often than monthly for heating costs such as butane or propane may continue to use the utility standard between billing months. The worker must assess the household's eligibility for the SUA at each application, reapplication, and when the household moves. If the household reports they no longer incur a heating or cooling expense, but still have a utility expense, the standard must be changed to either the basic utility allowance (BUA) or telephone standard.

(II) A household with utility expenses which are reimbursed or paid by an excluded payment such as a vendor payment, Housing and Urban Development (HUD) or Farmers Home Administration (FmHA) payment may use the SUA when the heating or cooling cost exceeds the amount of the excluded payment.

(ii) The BUA includes utility charges other than for heating and/or cooling which the household incurs.

(iii) The telephone standard is used if the household is not entitled to use the SUA or BUA but has a telephone cost; and

(D) the shelter costs for the home even when not actually occupied by the household because of employment or training away from home, illness, or abandonment of the home due to disaster or casualty loss. For the cost of a vacated home to be included in shelter costs, the household must intend to return to the home. The current occupants of the home, if any, must not be claiming the shelter costs during the absence of the household and the home must not be rented or leased during the absence of the household. If a deductible expense must be verified and obtaining the verification may delay the household's certification, the worker advises the household that the household's eligibility and benefit level may be determined without providing a deduction for the claimed but unverified expense. The appropriate utility standard is used if the household is entitled to claim it.

(c) The worker calculates a household's expenses based on the expenses the household expects to be billed for during the certification period. Anticipation for the expenses is based on the most recent month's bills unless the household is reasonably certain a change will occur.

(d) Households may elect to have an expense that:

(1) is billed monthly and fluctuates, averaged;

(2) is billed less often than monthly, averaged forward over the interval between scheduled billings; or

(3) if there is no scheduled billing interval, averaged forward over the period the expense is intended to cover.

(e) A deduction is allowed in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense.

(1) For example, rent which is due each month is included in the household's shelter costs, even if the household has not yet paid the expense.

(2) Amounts carried forward from past billing periods are not deductible even if included in the most recent billing and actually paid by the household.

(3) A particular expense may only be deducted once.

(f) The portion of an expense paid by an excluded reimbursement or vendor payment is not deductible. The amount left after deducting the excluded payment is deductible. This includes HUD and FmHA rent and utility payments. Expenses are only deductible if the service is provided by someone outside the household and the household makes a money payment for the service.

PART 5. DETERMINATION OF INCOME ~~AND DEDUCTIONS~~

340:50-7-49. Limitations of allowable deductions [REVOKED]

~~Deductible expenses include only certain costs of dependent care and shelter, the earned income allowance, a standard deduction, and certain medical costs for elderly or disabled members as described in Section 31 of this Subchapter. Education expenses and the cost of doing business for the self-employed are not deductions, but are income exclusions, and are to be handled in accordance with Section 22-28 of this Subchapter.~~

340:50-7-50. Types of expenses not allowed as deductions [REVOKED]

~~The portion of an expense paid by an excluded reimbursement or vendor payment is not deductible. The amount left after deducting the excluded payment is deductible. This includes HUD and FmHA rent and utility payments. For example, the portion of rent or utility covered by excluded vendor payments or medical costs reimbursed by insurance is not calculated as part of the household's shelter cost or medical expenses. When only a portion of the medical cost will be paid for by vendor payment or reimbursed by insurance, the amount not covered by the vendor payment or reimbursement is deductible at the time the amount of the vendor payment or reimbursement can be verified. Furthermore, expenses are only deductible if the service is provided by someone outside the household and the household makes a money payment for the service.~~

340:50-7-51. Billed expenses deducted in month due [REVOKED]

~~Except as provided in this Part a deduction is allowed in the month the expense is billed or otherwise becomes due, regardless of when the household intends to pay the expense. For example, rent which is due each month is included in the household's shelter costs, even if the household has not yet paid the expense. Amounts carried forward from past billing periods are not deductible even if included with the most recent billing and actually paid by the household. In any event, a particular expense may only be deducted once.~~

340:50-7-52. Anticipating expenses [REVOKED]

~~The worker calculates a household's expenses based on the expenses the household expects to be billed for during the certification period. Anticipation for the expenses is based on the most recent month's bills unless the household is reasonably certain a change will occur. When the household is not claiming the utility standard, the worker may anticipate changes during the certification period based on last year's bills from the same period updated by overall price increases; or, if only the most recent bill is available, utility cost increases or decreases over the months of the certification period may be based on utility use by the household. The worker may not average past expenses, such as utility bills for the last several months, as a method of anticipating utility costs for the certification period. When the household does not know the amount of on-going medical expenses that can be anticipated monthly over the certification period, the worker may anticipate these expenses by averaging at least the past two months' expenses.~~

340:50-7-53. Averaging expenses [REVOKED]

~~Households may elect to have fluctuating monthly expenses averaged. Households may also elect to have expenses which are billed less often than monthly averaged forward over the interval between scheduled billings, or, if there is no scheduled interval, averaged forward over the period the expense is intended to cover.For example, if the household receives a single bill in February which covers a two month supply of butane, the bill may be averaged over two months. The household may elect to have one time expenses such as installation of utilities averaged over the entire certification period in which they are billed. One time medical expenses which occur during the certification period may be prorated over the remainder of the certification period if the household elects. Prorating would begin the month the change becomes effective.~~

[OAR Docket #06-1048; filed 5-23-06]

TITLE 340. DEPARTMENT OF HUMAN SERVICES
CHAPTER 105. AGING SERVICES DIVISION

[OAR Docket #06-1065]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 10. Policies and Procedures Manual for Title III of The Older Americans Act of 1965, as amended
Part 9. Fiscal and Administrative Policies for Area Agencies on Aging and Title III Projects
340:105-10-105.1. [AMENDED]
(Reference APA WF 06-01)AUTHORITY:
Commission for Human Services, Article XXV, Sections 2, 3 and 4 of the Oklahoma Constitution; and the Older Americans Act, as amended.
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SUPERSEDED EMERGENCY ACTIONS:
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N/A
ANALYSIS:
The revisions to Subchapter 10 of Chapter 105 clarify and update language regarding non-Older Americans Act (OAA) contract income.
340:105-10-105.1 is amended regarding non-OAA contract income by deleting "service reimbursement" language and adding language specifying OAA and non-OAA regarding service cost.
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 15, 2006.

SUBCHAPTER 10. POLICIES AND PROCEDURES MANUAL FOR TITLE III OF THE OLDER AMERICANS ACT OF 1965, AS AMENDED

PART 9. FISCAL AND ADMINISTRATIVE POLICIES FOR AREA AGENCIES ON AGING AND TITLE III PROJECTS

340:105-10-105.1. Commercial and contractual activities of Area Agencies on Aging and Title III projects

(a) **Policy.** Area Agencies on Aging (AAAs) and Title III projects may engage in commercial and contractual activities compatible with the development or enhancement of comprehensive and coordinated service delivery systems for older persons. Commercial and contractual activities do not include activities ~~an~~ the AAA or Title III ~~Project~~ project performs pursuant to the Older Americans Act (OAA) program. This Section applies to Title III projects only when Title III facilities and staff are utilized in the performance of commercial and contractual activities. The AAA or Title III project performing commercial or contractual activities provides assurances to:

(1) demonstrate:

(A) a loss or diminution in the quantity or quality of OAA services provided, or to be provided, by the agency has not resulted and will not result from such contract or relationship; and

(B) the quantity or quality of OAA services to be provided will be enhanced as a result of such contract relationship;

(2) disclose:

(A) the identity of each nongovernmental entity with which the agency has a contract or commercial relationship relating to providing services to older persons;

(B) the nature of such contract or relationship; and

(C) all sources and expenditures of funds the agency receives or expends to provide services to older persons for the purpose of monitoring compliance with the OAA, including conducting an audit;

(3) maintain the integrity and public purpose of OAA services provided;

(4) not use OAA funds received to pay any part of a cost, including an administrative cost, incurred to carry out a contract or commercial relationship.

(A) ~~Income generated from OAA funded programs provided to~~ Final payment for non-OAA ~~participants is considered, akin to program income, service reimbursement. The complete cost of the service is reimbursed to the OAA funded program. No~~ services may not be from OAA funds ~~are construed as having paid for a non-OAA service~~. Contract income above the ~~actual~~ computed cost, including the allocated administrative cost, of the non-OAA service does not fall under the provision of Section 315 of the OAA.

(B) AAAs require OAA service providers to submit annual verification of the OAA and the non-OAA service cost computed in accordance with General Accepted Accounting Principles by a non-biased, qualified person, such as a certified public accountant (CPA).

(C) AAAs review the OAA and the non-OAA service cost methodology annually in accordance with General Accepted Accounting Principles using a qualified ~~individual~~ person, such as a CPA, to either approve it or disapprove it and work with the service provider to obtain suitable information. The final computation of the OAA and non-OAA service cost methodology, once approved by the AAA, is submitted to Aging Services Division annually in the AAA approved grants; and

(5) not give preference in receiving OAA services ~~will not be given~~ to particular older persons as a result of a contract or commercial relationship.

(b) **Authority.** The authority for this Section is ~~the Administration on Aging letter dated November 19, 2003; Oklahoma Department of Human Services Special Unit on Aging Policy Memo 04-05; and~~ Sections 306(a)(13) through (16) of the Older Americans Act, as amended.

(c) **Cross references.** There are no cross references for commercial and contractual activities.

[OAR Docket #06-1065; filed 5-24-06]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #06-1098]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
365:1-1-2. Office of the Insurance Commissioner
Subchapter 5. Rulemaking Procedures
365:1-5-1. Initiation of rulemaking~~; notice and public comment~~ [AMENDED]
365:1-5-2. Adoption of rules; filing and publication [REVOKED]
365:1-5-3. Effective date of rules [REVOKED]
365:1-5-4. Petitions for rulemaking [AMENDED]
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Failure of the Legislature to disapprove the rules resulted in approval on May 25, 2006
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments to Rule 365:1-1-2 set out names and descriptions of divisions within the Insurance Department. The proposed amendments to Subchapter 5 revoke or amend rules that are redundant and unnecessary, because the rules repeat various provisions of the Oklahoma Administrative Procedures Act, 75 O.S. § 250, et seq. The Insurance Department is subject to and must comply with that Act. The amendments to Rule 365:1-5-4 more clearly set out the form and procedure for the petition by any interested person for the promulgation, amendment, or repeal of a rule of the Insurance Department pursuant to 75 O.S. § 305.
CONTACT PERSON:
Karl F. Kramer, First Assistant General Counsel, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

365:1-1-2. Office of the Insurance Commissioner

The office of the Insurance Commissioner is composed of the Insurance Commissioner and such employees as are required and provided for by law. The Insurance Commissioner exercises executive and administrative supervision over the Office of the Insurance Commissioner.

(1) **General description of organization.** The office of the Insurance Commissioner is divided into the following principal operating units:

(A) Administrative Services Division
(B) Agents Licensing Division
(~~B~~C) Bail Bond Division
(~~C~~D) Consumer Assistance and Claims Division
(~~D~~E) Comptroller Division
(~~E~~F) Communications Division ~~Information Technology Division~~
(~~F~~G) Executive Division
(~~G~~H) Financial and Examination Division
(I) Information Technology Division
(~~H~~J) Legal and Investigation Division
(~~I~~K) Life, Accident and Health Division
(~~J~~L) Property and Casualty ~~Rates~~ Division
(~~K~~M) Real Estate Appraisers Division
(N) Senior Health Care Programs Division
(O) Utilization Review Division

(2) **Administrative Services Division.** The Administrative Services Division is under the direction of the Chief of Staff and is responsible for various administrative services as directed by the Insurance Commissioner including personnel, mail, and file maintenance.

(~~2~~3) **Agents Licensing Division.** The Agents Licensing Division, headed by the Director of Agents Licensing, is responsible for determining whether applicants for insurance agents, limited insurance representatives, insurance adjusters, third party administrators, life, accident and health insurance brokers and insurance consultants licenses meet the qualifications set forth in the statutes of the State of Oklahoma and is also responsible for administering the examinations given as required to applicants and for issuing renewal licenses. The Agents Licensing Division is also responsible for monitoring continuing education requirements for agents.

(~~3~~4) **Bail Bond Division.** The Bail Bond Division is composed of the Director and necessary assistants and is responsible for determining whether applicants for bail bond licenses meet the qualifications set forth in the statutes of the State of Oklahoma, for administering the examinations given to all bail bondsmen, yearly renewal of license and surety/ professional appointments, processing of monthly reports for each type of license held by bondsman, collection of 2/10 of 1% reviewal fee of new liability written monthly, enforce statutory deposit requirements of professional bondsmen and initial investigation of complaints regarding possible violation of statutes.

(~~4~~5) **Consumer Assistance and Claims Division.** The Consumer Assistance and Claims Division is composed of the Director of this division and necessary Policy Analysts, and is in charge of processing and investigating all complaints lodged against insurance companies and other persons/entities by the public. Further, this division answers all routine requests for information concerning insurance companies and insurance policies.

(~~5~~6) **Comptroller Division.** The Comptroller Division is composed of the Comptroller and necessary assistants and is responsible for the internal fiscal affairs of the office, including preparation of payroll, purchase of equipment, approval of all travel claims made by staff and keeping of all fiscal records required by law.

(~~6~~7) **Communications.** ~~**Information Technology Division.** The Information Technology Division is composed of the Director and necessary assistants and is responsible for providing all internal data processing services to the other divisions of the Insurance Department. Further, this division provides the public with both summaries and detailed information on many of the records maintained by the Insurance Department.~~ The Communications Division consists of the Communications Manager, a Communications Specialist, a Public Information Officer and necessary support staff. This division is responsible for maintaining and furthering internal and external communications. Among the duties performed in this division are development and management of the Insurance Department website, writing and facilitating

news releases, responding to media inquiries, directing the Insurance Commissioner's public event calendar and preparing needed materials for each event, production of consumer assistance and awareness events, designing collateral publications for producers and consumers, writing and releasing an internal newsletter and any other communications related duties as needed.

(~~7~~8) **Executive Division.** The Executive Division, composed of the Insurance Commissioner and the Deputy Commissioner and necessary assistants, is charged with general supervision of all activities of the office including personnel and internal organization.

(~~8~~9) **Financial and Examination Division.** The Financial and Examination Division is composed of the Chief Financial Examiner, the Deputy Chief Financial Examiner, the Chief ~~Senior~~ Financial Analyst and various other levels of ~~necessary~~ Financial Analysts and Financial Specialists~~,~~ and is responsible for determining whether insurance companies and other persons/entities applying for admission to do business in the State of Oklahoma meet the qualifications for admittance as set forth in the statutes of the State of Oklahoma. This division, through outside contract examiners, is responsible for conducting the statutory examination of all domestic and foreign insurance companies and other persons/entities and collects all premium taxes and statutory fees due the State. This division is also responsible for the review and analysis of all annual and quarterly financial statements of insurance companies as required by the statutes of the State of Oklahoma.

(10) **Information Technology Division.** The Information Technology Division is composed of the Director and necessary assistants and is responsible for providing all internal data processing services to the other divisions of the Insurance Department. Further, this division provides the public with both summaries and detailed information on many of the records maintained by the Insurance Department.

(~~9~~11) **Legal and Investigation Division.**

(A) The Legal Division is composed of the General Counsel and Assistant General Counsels who are the chief law officers and consultants to the Insurance Commissioner and the other divisions within the office on legal matters. The Legal Division defends or prosecutes all proceedings held before the Insurance Commissioner, including complaint hearings, as well as investigative hearings. The Legal Division is charged with the duty of representing the Insurance Commissioner in the courts in matters which are a part of his/her official duties.

(B) The Investigation Division is composed of the Chief Investigator and assistants and is responsible for investigating complaints against licensed insurance entities and forwarding its findings to the Legal Division, if evidence is found of wrongdoing or non-compliance with the insurance laws of the State of Oklahoma.

(C) The Anti-Fraud Unit is within the Legal and Investigation Division and is composed of the Chief Investigator and investigators who are commissioned by the Insurance Commissioner to serve as peace officers. It is responsible for investigating violations of statute or administrative rules of this state pertaining to insurance fraud.

(~~10~~12) **Life, Accident and Health Division.** The Life, Accident and Health Division is composed of the Director and the Policy Analysts. This division is responsible for the receipt of all life, annuity and accident and health policy forms and determines whether such forms conform to the statutes of the State of Oklahoma. This division has the duty of approving or disapproving all forms submitted to it.

(~~11~~13) **Property and Casualty ~~Rates~~ Division.** ~~The Property and Casualty Rates Division is composed of the Director and necessary Analysts and is responsible for providing administrative and logistical support to the State Board for Property and Casualty Rates. The five member Board is the entity which establishes rates for all property and casualty insurers doing business in the State of Oklahoma.~~ The Property and Casualty Division is composed of the Director and Rate and Form Analysts. This division is responsible for the receipt of most property and casualty policy forms, manual rules and rates, and determines whether such forms, manual rules and rates conform to the statutes of the State of Oklahoma.

(~~12~~14) **Real Estate Appraisers Division.** The Director of the Real Estate Appraisers Division is responsible for determining whether applicants for real estate appraiser licensure/certification meet the qualifications set forth in the statutes of the State of Oklahoma and for administering the examinations given to all real estate appraisers.

(15) **Senior Health Care Programs Division.** The Senior Health Care Programs Division is composed of two federal grant programs, SHICP and SUMMIT. The Division is composed of the Division Director and support staff. The Senior Health Insurance Counseling Program (SHICP) is responsible for providing information, counseling and assistance to Medicare and Medicaid beneficiaries so they may understand and access their health care benefits. SUMMIT Medicare/Medicaid Fraud, Abuse and Waste Program focuses on reducing Medicare/Medicaid fraud, abuse and waste by enhancing public awareness through community presentations and public education. Both programs train volunteers to assist with the programs' mission.

(~~13~~16) **Utilization Review Division.** The Director of the Utilization Review Division is responsible for determining whether applicants for Utilization Review Certificates of Registration meet the qualifications set forth in the statutes of the State of Oklahoma.

SUBCHAPTER 5. RULEMAKING PROCEDURES

365:1-5-1. Initiation of rulemaking~~; notice and public comment~~

~~(a)~~ ~~**How initiated.**~~ Proceedings for the promulgation of rules and regulations shall be initiated by the Insurance Commissioner.

~~(b)~~ ~~**Notice.**~~ ~~General notice, not less than twenty days prior to the adoption, amendment, or repeal of any rule or regulation, shall be given by mail to all persons who have made timely request for advance notice of such proceedings, and shall also be published in the Oklahoma Register. Provided, however, if it is found that there is imminent peril to the public health, safety or welfare a rule may be adopted upon fewer than twenty days notice when accompanied by a statement in writing of the reasons therefor. Such a rule may be promulgated without prior notice or upon such abbreviated notice and hearing as is practicable. Emergency rules adopted in the manner described above shall be effective upon the Governor's approval and through July 15th following sine die adjournment of next regular legislative session, unless superseded by another rule, disapproved by Legislature, or any adopted permanent rules based on the emergency rules are disapproved by the Legislature. The sufficiency of the reasons for the finding of imminent peril to the public health, safety or welfare shall be subject to judicial review.~~

~~(c)~~ ~~**Opportunity to be heard.**~~ ~~All interested persons shall be afforded a reasonable opportunity to participate in the rule making through submission of written data, views or arguments. Oral argument thereon shall be granted if requested in writing by not less than twenty-five persons, by a governmental agency, or by an association having not less than twenty five members. Oral argument may be otherwise granted at the discretion of the Commissioner.~~

365:1-5-2. Adoption of rules; filing and publication

~~(a)~~ ~~The Commissioner shall consider fully all written and oral submissions respecting the proposed rule prior to adoption thereof.~~

~~(b)~~ ~~Within 10 days after adoption of permanent rules, the rules are submitted to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate. Upon receipt of the Governor's written approval of emergency rules, a copy of the Governor's approval and the emergency rule document are submitted to the Speaker of the House of Representatives and the President Pro Tempore of the Senate.~~

~~(c)~~ ~~Rules shall be filed with the Secretary of State conformity with the provisions of 75 O.S. §251 et seq.~~

~~(d)~~ ~~Copies of all rules promulgated shall be made available to any interested person requesting the same.~~

365:1-5-3. Effective date of rules

~~(a)~~ ~~**Permanent rules.**~~ ~~Permanent rules become effective on the date specified in the preamble of the rule document submitted for publication in the Oklahoma Register. This date must be at least ten (10) days after the date of publication in the Register.~~

~~(b)~~ ~~**Emergency rules.**~~ ~~Emergency rules become effective immediately upon Governor's approval, unless another effective date is specified in the rulemaking document.~~

365:1-5-4. Petitions for rulemaking

(a) Any interested person may petition the Insurance Commissioner ~~for~~ requesting the ~~issuance~~ promulgation, amendment, or repeal of a rule of the Insurance Department. ~~Proceedings for such issuance, amendment or repeal of a rule shall be the same as provided in this Chapter.~~ Such petition must be in writing and must include:

(1) The name and address of the person requesting the adoption, amendment or repeal of the rule;

(2) Name and address of the organization the person represents, if applicable;

(3) Any numbers and headings used to identify an existing rule or to adopt a new rule;

(4) The proposed language if the request is to amend an existing rule or to adopt a new rule;

(5) The circumstances which created the need for action; and

(6) The intended effect of the action.

(b) Upon receipt of a petition as described in Subsection (a) of this Section, the Insurance Commissioner will initiate a study of the requested change through whatever means he or she deems appropriate. If the Insurance Commissioner formally acts upon the petition, the petitioner will be advised of the action in writing as specified by the Insurance Commissioner. In accordance with 75 O.S. § 305, if the Insurance Commissioner has not initiated rulemaking proceedings within thirty (30) calendar days after the submission of a petition, the petition shall be deemed to have been denied.

[OAR Docket #06-1098; filed 5-26-06]

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

[OAR Docket #06-1099]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 5. Minimum Standards; Contract Guidelines
Part 17. Actuarial Opinion and Memorandum Regulation
365:10-5-170. Purpose [AMENDED]
365:10-5-171. Scope [AMENDED]
365:10-5-172. Definitions [AMENDED]
365:10-5-173. General requirements [AMENDED]
365:10-5-174. Required opinions [REVOKED]
365:10-5-175. Statement of actuarial opinion not including an asset adequacy analysis [REVOKED]
365:10-5-176. Statement of actuarial opinion based on an asset adequacy analysis [AMENDED]
365:10-5-177. Description of actuarial memorandum including an asset adequacy analysis [AMENDED]
365:10-5-178. Additional considerations for analysis [REVOKED]
Subchapter 23. Discount Medical Plan Organizations [NEW]
365:10-23-1. Forms [NEW]
365:10-23-2. Inducements [NEW]

Appendix S. Outline of Coverage Tables [REVOKED]
Appendix S. Outline of Coverage [NEW]
Appendix Z. Form Tabulating Reserves and Related Actuarial Terms [REVOKED]
Appendix Z. Asset Adequacy Test Amounts - Reserves and Liabilities [NEW]
Appendix GG. Information Provided Pursuant To Section 365:10-5-176(f)(1)(C)(ii) of the Actuarial Opinion and Memorandum Regulation [NEW]

AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1, 1219.4(N), 3611.1 and 4061

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ANALYSIS:
The proposed amendments to the Actuarial Opinion and Memorandum Regulation bring the regulation in line with the National Association of Insurance Commissioner's latest model regulation and include new Appendix GG. Proposed new Rule 365:10-23-1 sets out requirements relating to forms used by discount medical plan organizations. Proposed new rule 365:10-23-2 sets out prohibited inducements by discount medical plan organizations. The proposed amendments to Appendix S of Chapter 10 are intended to bring the appendix into line with the current National Association of Insurance Commissioners' model regulation as approved by the federal government.

CONTACT PERSON:
Karl F. Kramer, First Assistant General Counsel, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2006:

SUBCHAPTER 5. MINIMUM STANDARDS; CONTRACT GUIDELINES

PART 17. ACTUARIAL OPINION AND MEMORANDUM REGULATION

365:10-5-170. Purpose

The purpose of this regulation is to prescribe:

(1) Requirements~~Guidelines and standards~~ for statements of actuarial opinion which are to be submitted in accordance with Section 4061 of the Oklahoma Insurance Code, and for memoranda in support thereof;

(2) ~~Guidelines and standards for statements of actuarial opinion which are to be submitted when a company is exempt from Section 4061(B) of the Oklahoma Insurance Code; and~~

~~(3)~~ Rules applicable to the appointment of an appointed actuary~~.~~; and

(3) Guidance as to the meaning of "adequacy of reserve."

365:10-5-171. Scope

(a) This regulation shall apply to all life insurance companies and fraternal benefit societies doing business in this State and to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance, annuities or accident and health insurance business in this State.

(b) This regulation shall be applicable to all annual statements filed with the office of the Commissioner after the effective date of this regulation. This regulation shall be applied in a manner that allows the appointed actuary to utilize his or her professional judgment in performing the asset analysis and developing the actuarial opinion and supporting memoranda, consistent with relevant actuarial analysis and actuarial assumptions when, in the Commissioner's judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items. ~~Except with respect to companies which are exempted pursuant to Rule 365:10-5-174, a~~A statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with Rule 365:10-5-176, and a memorandum in support thereof in accordance with Rule 365:10-5-177, shall be required each year. ~~Any company so exempted must file a statement of actuarial opinion pursuant to Rule 365:10-5-175.~~

~~(c) Notwithstanding the foregoing, the Commissioner may require any company otherwise exempt pursuant to this regulation to submit a statement of actuarial opinion and to prepare a memorandum in support thereof in accordance with Rule 365:10-5-176 and Rule 365:10-5-177 if, in the opinion of the Commissioner, an asset adequacy analysis is necessary with respect to the company.~~

365:10-5-172. Definitions

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

"Actuarial Opinion" means~~:~~ the opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with Rule 10-5-176 of this regulation and with applicable Actuarial Standards of Practice.

~~(A) With respect to Rule 365:10-5-176, 177 and 178, the opinion of an Appointed Actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy test in accordance~~

~~with Rule 365:10-5-176 of this regulation and with presently accepted Actuarial Standards;~~

~~(B) With respect to Rule 365:10-5-175, the opinion of an Appointed Actuary regarding the calculation of reserves and related items, in accordance with Rule 365:10-5-175 of this regulation and with those presently accepted Actuarial Standards which specifically relate to this opinion.~~

"Actuarial Standards Board" means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

"Annual Statement" means that statement required by Section 311 of the Oklahoma Insurance Code to be filed by the company with the office of the Commissioner annually.

"Appointed Actuary" means any individual who is appointed or retained in accordance with the requirements set forth in Rule 365:10-5-173(c) of this regulation to provide the actuarial opinion and supporting memorandum as required by Section 4061 of Oklahoma Insurance Code.

"Asset Adequacy Analysis" means an analysis that meets the standards and other requirements referred to in Rule 365:10-5-173(d). ~~It may take many forms, including, but not limited to, cash flow testing, sensitivity testing or applications of risk theory.~~

"Commissioner" means the Insurance Commissioner of this State.

"Company" means a life insurance company, fraternal benefit society or reinsurer subject to the provisions of this regulation.

~~**"Non-Investment Grade Bonds"** are those designated as classes 3, 4, 5 or 6 by the NAIC Securities Valuation Office.~~

"Qualified Actuary" means any individual who meets the requirements set forth in Rule 365:10-5-173(b).

365:10-5-173. General requirements

(a) **Submission of Statement of Actuarial Opinion.**

(1) There is to be included on or attached to Page 1 of the annual statement for each year beginning with the year in which this regulation becomes effective the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with Rule 365:10-5-176~~; provided, however, that any company exempted pursuant to Rule 365:10-5-174 from submitting a statement of actuarial opinion in accordance with Rule 365:10-5-176 shall include on or attach to Page 1 of the annual statement a statement of actuarial opinion rendered by an appointed actuary in accordance with Rule 365:10-5-175~~.

~~(2) If in the previous year a company provided a statement of actuarial opinion in accordance with Rule 365:10-5-175, and in the current year fails the exemption criteria of Rules 365:10-5-174(c)(1), 365:10-5-174(c)(2) or 365:10-5-174(c)(5) to again provide an actuarial opinion in accordance with Rule 365:10-5-175, the statement of actuarial opinion in accordance with Rule 365:10-5-176 shall not be required until August 1 following the date of the annual statement. In this instance, the company shall provide a statement of actuarial opinion in accordance with Rule 365:10-5-175 with appropriate qualification noting the intent to subsequently provide a statement of actuarial opinion in accordance with Rule 365:10-5-176.~~

~~(3) In the case of a statement of actuarial opinion required to be submitted by a foreign or alien company, the Commissioner may accept the statement of actuarial opinion filed by such company with the insurance supervisory regulator of another state if the Commissioner determines that the opinion reasonably meets the requirements applicable to a company domiciled in this State.~~

~~(4)~~ Upon written request by the company, the Commissioner may grant an extension of the date for submission of the statement of actuarial opinion.

(b) **Qualified actuary.** A "qualified actuary" is an individual who:

(1) Is a member in good standing of the American Academy of Actuaries; and

(2) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements; and

(3) Is familiar with the valuation requirements applicable to life and health insurance companies; and

(4) Has not been found by the Commissioner (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and opportunity for hearing to have:

(A) Violated any provision of, or any obligation imposed by, the Insurance Law or other law in the course of his or her dealings as a qualified actuary; ~~or~~

(B) Been found guilty of fraudulent or dishonest practices; ~~or~~

(C) Demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary; ~~or~~

(D) Submitted to the Commissioner during the past five (5) years, pursuant to this regulation, an actuarial opinion or memorandum that the Commissioner rejected because it did not meet the provisions of this regulation including standards set by the Actuarial Standards Board; or

(E) Resigned or been removed as an actuary within the past five (5) years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

(5) Has not failed to notify the Commissioner of any action taken by any Commissioner of any other state similar to that under paragraph (b)(4) of this rule.

(c) **Appointed actuary.** An "appointed actuary" is a qualified actuary who is appointed or retained to prepare the Statement of Actuarial Opinion required by this regulation~~;~~, either directly by or by the authority of the board of directors through an executive officer of the company other than the qualified actuary. The company shall give the Commissioner

timely written notice of the name, title (and, in the case of a consulting actuary, the name of the firm) and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in such notice that the person meets the requirements set forth in Rule 365:10-5-173(b). Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the Commissioner timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in Rule 365:10-5-173(b). If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

(d) **Standards for asset adequacy analysis.** The asset adequacy analysis required by this regulation:

(1) Shall conform to the Standards of Practice as promulgated from time to time by the Actuarial Standards Board and on any additional standards under this regulation, which standards are to form the basis of the statement of actuarial opinion in accordance with Rule 365:10-5-176 this regulation; and

(2) Shall be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.

(e) **Liabilities to be covered.**

(1) Under authority of Section 4061 of the Oklahoma Insurance Code, the statement of actuarial opinion shall apply to all in force business on the statement date, whether directly issued or assumed, regardless of when or where issued, e.g., reserves of Exhibits 8, 9 and 10, and claim liabilities in Exhibit 11, Part ~~I~~1 and equivalent items in the separate account statement or statements.

(2) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in Section 1510 of the Oklahoma Insurance Code, the company shall establish such additional reserve.

(3) ~~For years ending prior to December 31, 2000, the company may, in lieu of establishing the full amount of the additional reserve in the annual statement for that year, set up an additional reserve in an amount not less than the following:~~

~~(A) December 31, 1998 The additional reserve divided by three.~~

~~(B) December 31, 1999 Two times the additional reserve divided by three.~~

~~(4)~~ Additional reserves established under paragraphs (e)(2) ~~and (e)(3)~~ of this rule and deemed not necessary in subsequent years may be released. Any amounts released ~~must~~ shall be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation.

365:10-5-174. Required opinions [REVOKED]

~~(a) In accordance with Section 4061 of the Oklahoma Insurance Code, every company doing business in this State shall annually submit the opinion of an appointed actuary as provided for by this regulation. The type of opinion submitted shall be determined by the provisions set forth in this Rule 365:10-5-174 and shall be in accordance with the applicable provisions in this regulation (Rules 365:10-5-170 through 365:10-5-178).~~

~~(b) For purposes of this regulation, companies shall be classified as follows based on the admitted assets as of the end of the calendar year for which the actuarial opinion is applicable:~~

~~(1) Category A shall consist of those companies whose admitted assets do not exceed $20 million;~~

~~(2) Category B shall consist of those companies whose admitted assets exceed $20 million but do not exceed $100 million;~~

~~(3) Category C shall consist of those companies whose admitted assets exceed $100 million but do not exceed $500 million; and~~

~~(4) Category D shall consist of those companies whose admitted assets exceed $500 million.~~

~~(c) Exemption Eligibility Tests~~

~~(1) Any Category A company that, for any year beginning with the year in which this regulation becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with Rule 365:10-5-176 of this regulation for the year in which these criteria are met. The ratios in (A), (B) and (C) below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.~~

~~(A) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .10.~~

~~(B) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .30.~~

~~(C) The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than .50.~~

~~(D) The Examiner Team for the National Association of Insurance Commissioners (NAIC) has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the Commissioner of the state of domicile and the Commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.~~

~~(2) Any Category B company that, for any year beginning with the year in which this regulation becomes effective, meets all of the following criteria shall be eligible for exemption from submission of a statement of actuarial opinion in accordance with 365:10-5-176 for the year in which the criteria are met. The ratios in (A), (B) and (C) below shall be calculated based on amounts as of the end~~

~~of the calendar year for which the actuarial opinion is applicable.~~

~~(A) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .07.~~

~~(B) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .40.~~

~~(C) The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is less than .50.~~

~~(D) The Examiner Team for the National Association of Insurance Commissioners (NAIC) has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the Commissioner of the state of domicile and the Commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.~~

~~(3) Any Category A or Category B company that meets all of the criteria set forth in Rules 365:10-5-174(c)(1) or 365:10-5-174(c)(2), whichever is applicable, is exempted from submission of a statement of actuarial opinion in accordance with Rule 365:10-5-176 of this regulation unless the Commissioner specifically indicates to the company that the exemption is not to be taken.~~

~~(4) Any Category A or Category B company that, for any year beginning with the year in which this regulation becomes effective, is not exempted under 365:10-5-174(c)(3) of this subsection shall be required to submit a statement of actuarial opinion in accordance with Rule 365:10-5-176 for the year for which it is not exempt.~~

~~(5) Any Category C company that, after submitting an opinion in accordance with Rule 365:10-5-176, meets all of the following criteria shall not be required, unless required in accordance with Rule 365:10-5-174(c)(6) below, to submit a statement of actuarial opinion in accordance with Rule 365:10-5-176 more frequently than every third year. Any Category C company which fails to meet all of the following criteria for any year shall submit a statement of actuarial opinion in accordance with Rule 365:10-5-176 for that year. The ratios in (A), (B) and (C) below shall be calculated based on amounts as of the end of the calendar year for which the actuarial opinion is applicable.~~

~~(A) The ratio of the sum of capital and surplus to the sum of cash and invested assets is at least equal to .05.~~

~~(B) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted assets is less than .50.~~

~~(C) The ratio of the book value of the non-investment grade bonds to the sum of the capital and surplus is less than .50.~~

~~(D) The Examiner Team for the National Association of Insurance Commissioners (NAIC) has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or the company has resolved the first or second priority status to the satisfaction of the Commissioner of the state of domicile and the Commissioner has so notified the chair of the NAIC Life and Health Actuarial Task Force and the NAIC Staff and Support Office.~~

~~(6) Any company which is not required by this Rule 365:10-5-174 to submit a statement of actuarial opinion in accordance with Rule 365:10-5-176 for any year shall submit a statement of actuarial opinion in accordance with Rule 365:10-5-175 for that year unless as provided for by the second paragraph of Rule 365:10-5-171 the Commissioner requires a statement of actuarial opinion in accordance with Rule 365:10-5-176.~~

~~(d) Every Category D company shall submit a statement of actuarial opinion in accordance with Rule 365:10-5-176 for each year beginning with the year in which this regulation becomes effective.~~

365:10-5-175. Statement of actuarial opinion not including an asset adequacy analysis [REVOKED]

~~(a) The statement of actuarial opinion required by this section shall consist of a paragraph identifying the appointed actuary and his or her qualifications; a regulatory authority paragraph stating that the company is exempt pursuant to this regulation from submitting a statement of actuarial opinion based on an asset adequacy analysis and that the opinion, which is not based on an asset adequacy analysis, is rendered in accordance with Rule 365:10-5-175; a scope paragraph identifying the subjects on which the opinion is to be expressed and describing the scope of the appointed actuary's work; and an opinion paragraph expressing the appointed actuary's opinion as required by Section 4061 of the Oklahoma Insurance Code.~~

~~(b) The following language provided is that which in typical circumstances would be included in a statement of actuarial opinion in accordance with this section. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language which clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in Rule 365:10-5-175.~~

~~(1) The opening paragraph should indicate the appointed actuary's relationship to the company.~~

~~(A) For a company actuary, the opening paragraph of the actuarial opinion should read as follows: "I, [name of actuary], am [title] of [name of company] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the Commissioner~~

~~dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health companies."~~

~~(B) For a consulting actuary, the opening paragraph of the actuarial opinion should contain a sentence such as: "I, [name and title of actuary], a member of the American Academy of Actuaries, am associated with the firm of [insert name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."~~

~~(2) The regulatory authority paragraph should include a statement such as the following: "Said company is exempt pursuant to Regulation [insert designation] of the [name of state] Insurance Department from submitting a statement of actuarial opinion based on an asset adequacy analysis. This opinion, which is not based on an asset adequacy analysis, is rendered in accordance with Rule 365:10-5-175."~~

~~(3) The scope paragraph should contain a sentence such as the following: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, [ ]." The paragraph should list items and amounts with respect to which the appointed actuary is expressing an opinion. The list should include but not be necessarily limited to:~~

~~(A) Aggregate reserve and deposit funds for policies and contracts included in Exhibit 8;~~

~~(B) Aggregate reserve and deposit funds for policies and contracts included in Exhibit 9;~~

~~(C) Deposit funds, premiums, dividend and coupon accumulations and supplementary contracts not involving life contingencies included in Exhibit 10; and~~

~~(D) Policy and contract claims - liability end of current year included in Exhibit 11, Part I.~~

~~(4) If the appointed actuary has examined the underlying records, the scope paragraph should also include the following: "My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic records and such tests of the actuarial calculations as I considered necessary."~~

~~(5) If the appointed actuary has not examined the underlying records, but has relied upon listings and summaries of policies in force prepared by the company or a third party, the scope paragraph should include a sentence such as one of the following: "I have relied upon listings and summaries of policies and contracts and other liabilities in force prepared by [name and title of company officer certifying in-force records] as certified in the attached statement. (See accompanying affidavit by a company officer.) In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary" or "I have relied upon [name of accounting firm] for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary." The statement of the person certifying shall follow the form indicated by Rule 365:10-5-175(b)(10).~~

~~(6) The opinion paragraph should include the following: "In my opinion the amounts carried in the balance sheet on account of the actuarial items identified above:~~

~~(A) Are computed in accordance with those presently accepted actuarial standards which specifically relate to the opinion required under this section;~~

~~(B) Are based on actuarial assumptions which produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;~~

~~(C) Meet the requirements of the Insurance Law and regulations of the state of [state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed.~~

~~(D) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end with any exceptions as noted below; and~~

~~(E) Include provision for all actuarial reserves and related statement items which ought to be established. The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Compliance Guidelines as promulgated by the Actuarial Standards Board, which guidelines form the basis of this statement of opinion."~~

~~(7) The concluding paragraph should document the eligibility for the company to provide an opinion as provided by this Rule 365:10-5-175. It shall include the following: "This opinion is provided in accordance with Rule 365:10-5-175 of the NAIC Actuarial Opinion and Memorandum Regulation. As such it does not include an opinion regarding the adequacy of reserves and related actuarial items when considered in light of the assets which support them." Eligibility for Rule 365:10-5-175 is confirmed as follows:~~

~~(A) The ratio of the sum of capital and surplus to the sum of cash and invested assets is [insert amount], which equals or exceeds the applicable criterion based on the admitted assets of the company (Rule 365:10-5-174(c)).~~

~~(B) The ratio of the sum of the reserves and liabilities for annuities and deposits to the total admitted~~

~~assets is [insert amount], which is less than the applicable criteria based on the admitted assets of the company (Rule 365:10-5-174(c)).~~

~~(C) The ratio of the book value of the non-investment grade bonds to the sum of capital and surplus is [insert amount], which is less than the applicable criteria of .50.~~

~~(D) To my knowledge, the NAIC Examiner Team has not designated the company as a first priority company in any of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable, or a second priority company in each of the two (2) calendar years preceding the calendar year for which the actuarial opinion is applicable or the company has resolved the first or second priority status to the satisfaction of the commissioner of the state of domicile.~~

~~(E) To my knowledge there is not a specific request from any Commissioner requiring an asset adequacy analysis opinion.~~

~~Signature of Appointed Actuary~~

~~Address of Appointed Actuary~~

~~Telephone Number of Appointed Actuary"~~

~~(8) If there has been any change in the actuarial assumptions from those previously employed, that change should be described in the annual statement or in a paragraph of the statement of actuarial opinion, and the reference in Rule 365:10-5-175(b)(6)(D) above to consistency should read as follows: "... with the exception of the change described on Page [ ] of the annual statement (or in the preceding paragraph)." The adoption for new issues or new claims or other new liabilities of an actuarial assumption which differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this paragraph.~~

~~(9) If the appointed actuary is unable to form an opinion, he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for such opinion. This statement should follow the scope paragraph and precede the opinion paragraph.~~

~~(10) If the appointed actuary does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force, there should be attached to the opinion, the statement of a company officer or accounting firm who prepared such underlying data similar to the following: "I [name of officer], [title] of [name and address of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in force as of December 31, [ ], prepared for and submitted to [name of appointed actuary], were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.~~

~~Signature of the Officer of the Company or Accounting Firm~~

~~Address of the Officer of the Company or Accounting Firm~~

~~Telephone Number of the Officer of the Company or Accounting Firm"~~

365:10-5-176. Statement of actuarial opinion based on an asset adequacy analysis

(a) **General description.** The statement of actuarial opinion submitted in accordance with this section shall consist of:

(1) A paragraph identifying the appointed actuary and his or her qualifications (see Rule 365:10-5-176(b)(1));

(2) A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary's work, including a tabulation delineating the reserves and related actuarial items ~~which~~that have been analyzed for asset adequacy and the method of analysis, (see Rule 365:10-5-176(b)(2)) and identifying the reserves and related actuarial items covered by the opinion ~~which~~that have not been so analyzed;

(3) A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions, (e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios (see Rule 365:10-5-176(b)(3)), supported by a statement of each such expert in the form prescribed by Rule 365:10-5-176(e); and

(4) An opinion paragraph expressing the appointed actuary's opinion with respect to the adequacy of the supporting assets to mature the liabilities (see Rule 365:10-5-176(b)(6)).

(5) One or more additional paragraphs will be needed in individual company cases as follows:

(A) If the appointed actuary considers it necessary to state a qualification of his or her opinion;

(B) ~~If the appointed actuary must disclose the method of aggregation for reserves of different products or lines of business for asset adequacy analysis;~~

~~(C) If the appointed actuary must disclose reliance upon any portion of the assets supporting the Asset Valuation Reserve (AVR), Interest Maintenance Reserve (IMR) or other mandatory or voluntary statement of reserves for asset adequacy analysis.~~

~~(D)~~ If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion.

(~~E~~C) If the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release.

(~~F~~D) If the appointed actuary chooses to add a paragraph briefly describing the assumptions which form the basis for the actuarial opinion.

(b) **Recommended language.** The following paragraphs are to be included in the statement of actuarial opinion in accordance with this section. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language ~~which~~that clearly expresses his or her professional judgment. However, in any event the opinion shall retain all pertinent aspects of the language provided in this section.

(1) The opening paragraph should generally indicate the appointed actuary's relationship to the company and his or her qualifications to sign the opinion.

(A) For a company actuary, the opening paragraph of the actuarial opinion should include a statement ~~read~~ as ~~follows~~: "I, [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the Board of Directors of said insurer to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

(B) For a consulting actuary, the opening paragraph should ~~contain~~include a ~~sentence~~statement such as: "I, [name], a member of the American Academy of Actuaries, am associated with the firm of [name of consulting firm]. I have been appointed by, or by the authority of, the Board of Directors of [name of company] to render this opinion as stated in the letter to the Commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies."

(2) The scope paragraph should include a statement such as~~ the following~~: "I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, ~~19~~20[ ]. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis." The table to be included in the annual statement is found in Appendix Z to this Chapter.

(3) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as the following: "I have relied on [name], [title] for [e.g., "anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios" or "certain critical aspects of the analysis performed in conjunction with forming my opinion"]~~ and~~, as certified in the attached statement.~~, ...~~I have reviewed the information relied upon for reasonableness."~~or "I have relied on personnel as cited in the supporting memorandum for certain critical aspects of the analysis in reference to the accompanying statement."~~ Such a statement of reliance on other experts should be accompanied by a statement by each of such experts of the form prescribed by Rule 365:10-5-176(e).

(4) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should ~~also~~ include ~~the following~~ a statement such as: "My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to [exhibits and schedules listed as applicable] of the company's current annual statement."

(5) If the appointed actuary has not examined the underlying records, but has relied upon data (e.g., listings and summaries of policies in force ~~and/~~or asset records) prepared by the company~~ or a third party~~, the reliance paragraph should include a sentence such as: "I ~~have~~ relied upon ~~listings and summaries [of policies and contracts, of asset records]~~ data prepared by [name and title of company officer certifying in-force records or other data] as certified in the attached statements. ~~In other respects my examination included such review of the actuarial assumptions and actuarial methods and such tests of the actuarial calculations as I considered necessary." or "I have relied upon [name of accounting firm] for the substantial accuracy of the in-force records inventory and information concerning other liabilities, as certified in the attached statement.~~ I evaluated that data for reasonableness and consistency. I also reconciled that data to [exhibits and schedules to be listed as applicable] of the company's current annual statement. In other respects my examination included review of the actuarial assumptions and actuarial methods and tests of the ~~actuarial~~ calculations as I considered necessary." ~~Such a~~ The section must be accompanied by a statement by each person relied upon of the form prescribed by Rule 365:10-5-176(e).

(6) The opinion paragraph should include ~~the following~~ a statement such as: "In my opinion the reserves and related actuarial values concerning the statement items identified above:

(A) Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

(B) Are based on actuarial assumptions ~~which~~ that produce reserves at least as great as those called for in any contract provision as to reserve basis and

method, and are in accordance with all other contract provisions;

(C) Meet the requirements of the Insurance Law and regulation of the state of [state of domicile] and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed.

(D) Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below); and

(E) Include provision for all actuarial reserves and related statement items which ought to be established.

The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on ~~such~~ the assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company. (At the discretion of the Commissioner, this language may be omitted for an opinion filed on behalf of a company doing business only in this state and in no other state.)

The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.

This opinion is updated annually as required by statute. To the best of my knowledge, there have been no material changes from the applicable date of the annual statement to the date of the rendering of this opinion which should be considered in reviewing this opinion.

or

The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (Describe the change or changes.)

(Note: Choose one of the above two paragraphs, whichever is applicable.)

The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company's future experience may not follow all the assumptions used in the analysis.

Signature of Appointed Actuary

Address of Appointed Actuary

Telephone Number of Appointed Actuary"

Date"

(c) **Assumptions for new issues.** The adoption for new issues or new claims or other new liabilities of an actuarial assumption ~~which~~ that differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this Rule 365:10-5-176.

(d) **Adverse opinions.** If the appointed actuary is unable to form an opinion, then he or she shall refuse to issue a statement of actuarial opinion. If the appointed actuary's opinion is adverse or qualified, then he or she shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for ~~such~~ the opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

(e) **Reliance on information furnished by other persons.** If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons the actuary is relying upon and a precise identification of the items subject to reliance. In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address and telephone number of the person rendering the certification, as well as the date on which it is signed. ~~does not express an opinion as to the accuracy and completeness of the listings and summaries of policies in force and/or asset oriented information, there shall be attached to the opinion the statement of a company officer or accounting firm who prepared such underlying data similar to the following:~~

~~"I [name of officer], [title], of [name of company or accounting firm], hereby affirm that the listings and summaries of policies and contracts in force as of December 31, 19[ ], and other liabilities prepared for and submitted to [name of appointed actuary] were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.~~

~~Signature of the Officer of the Company or Accounting Firm~~

~~Address of the Officer of the Company or Accounting Firm~~

~~Telephone Number of the Officer of the Company or Accounting Firm"~~

~~and/or~~

~~"I, [name of officer], [title] of [name of company, accounting firm, or security analyst], hereby affirm that the listings, summaries and analyses relating to data prepared for and submitted to [name of appointed actuary] in support of the asset-oriented aspects of the opinion were prepared under my direction and, to the best of my knowledge and belief, are substantially accurate and complete.~~

~~Signature of the Officer of the Company, Accounting Firm or the Security Analyst~~

~~Address of the Officer of the Company, Accounting Firm or the Security Analyst~~

~~Telephone Number of the Officer of the Company, Accounting Firm or Security Analyst"~~

(f) **Alternate option.**

(1) The Standard Valuation Law gives the commissioner broad authority to accept the valuation of a foreign insurer when that valuation meets the requirements applicable to a company domiciled in this state in the aggregate. As an alternative to the requirements of Rule 365:10-5-176(b)(6)(C), the commissioner may make one or more of the following additional approaches available to the opining actuary:

(A) A statement that the reserves "meet the requirements of the insurance laws and regulations of the State of [state of domicile] and the formal written standards and conditions of this state for filing an opinion based on the law of the state of domicile." If the commissioner chooses to allow this alternative, a formal written list of standards and conditions shall be made available. If a company chooses to use this alternative, the standards and conditions in effect on July 1 of a calendar year shall apply to statements for that calendar year, and they shall remain in effect until they are revised or revoked. If no list is available, this alternative is not available.

(B) A statement that the reserves "meet the requirements of the insurance laws and regulations of the State of [state of domicile] and I have verified that the company's request to file an opinion based on the law of the state of domicile has been approved and that any conditions required by the commissioner for approval of that request have been met." If the commissioner chooses to allow this alternative, a formal written statement of such allowance shall be issued no later than March 31 of the year it is first effective. It shall remain valid until rescinded or modified by the commissioner. The rescission or modifications shall be issued no later than March 31 of the year they are first effective. Subsequent to that statement being issued, if a company chooses to use this alternative, the company shall file a request to do so, along with justification for its use, no later than April 30 of the year of the opinion to be filed. The request shall be deemed approved on October 1 of that year if the commissioner has not denied the request by that date.

(C) A statement that the reserves "meet the requirements of the insurance laws and regulations of the State of [state of domicile] and I have submitted the required comparison as specified by this state."

(i) If the commissioner chooses to allow this alternative, a formal written list of products (to be added to the table in Item (ii) below as set out in Apppendix GG of this Chapter) for which the required comparison shall be provided will be published. If a company chooses to use this alternative, the list in effect on July 1 of a calendar year shall apply to statements for that calendar year, and it shall remain in effect until it is revised or revoked. If no list is available, this alternative is not available.

(ii) If a company desires to use this alternative, the appointed actuary shall provide a comparison of the gross nationwide reserves held to the gross nationwide reserves that would be held under NAIC codification standards. Gross nationwide reserves are the total reserves calculated for the total company in force business directly sold and assumed, indifferent to the state in which the risk resides, without reduction for reinsurance ceded. The information provided shall be at least product type, death benefit or account value, reserves held, condification reserves and codification standard as set out in Appendix GG to this Chapter.

(iii) The information listed shall include all products identified by either the state of filing or any other states subscribing to this alternative.

(iv) If there is no codification standard for the type of product or risk in force or if the codification standard does not directly address the type of product or risk in force, the appointed actuary shall provide detailed disclosure of the specific method and assumptions used in determining the reserves held.

(v) The comparison provided by the company is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

(2) Notwithstanding the above, the commissioner may reject an opinion based on the laws and regulations of the state of domicile and require an opinion based on the laws of this state. If a company is unable to provide the opinion within sixty (60) days of the request or such other period of time determined by the commissioner after consultation with the company, the commissioner may contract an independent actuary at the company's expense to prepare and file the opinion.

365:10-5-177. Description of actuarial memorandum including an asset adequacy analysis

(a) **General.**

(1) In accordance with Section 4061 of the Oklahoma Insurance Code, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of his or her opinion regarding the reserves ~~under a Rule 365:10-5-176 opinion~~. The memorandum shall be made available for examination by the Commissioner upon his or her request but shall be returned to the company after such examination and shall not be considered a record of the ~~insurance~~ Insurance ~~department~~ Department or subject to automatic filing with the Commissioner.

(2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of his or her own memorandum, memoranda prepared and signed by other actuaries who are qualified within the meaning of Rule 365:10-5-173(b) of this regulation, with respect to the areas covered in such memoranda, and so state in their memoranda.

(3) If the Commissioner requests a memorandum and no such memorandum exists or if the Commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this regulation, the Commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the Commissioner.

(4) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company and the work papers and documentation of the reviewing actuary shall be retained by the Commissioner; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the Commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the Commissioner pursuant to the statute governing this regulation. The reviewing actuary shall not be an employee of a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this regulation for any one of the current year or the preceding three (3) years.

(5) In accordance with Section 4061 of the Oklahoma Insurance Code, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in Subsection (c). The regulatory asset adequacy issues summary will be submitted no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. The regulatory asset adequacy issues summary is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

(b) **Details of the memorandum documenting asset adequacy analysis.** When an actuarial opinion ~~under Rule 365:10-5-176~~ is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in Rule 365:10-5-173(d) of this regulation and any additional standards under this regulation. It shall specify:

(1) For reserves:

(A) Product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;

(B) Source of liability in force;

(C) Reserve method and basis;

(D) Investment reserves;

(E) Reinsurance arrangements~~.~~

(F) Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis;

(G) Documentation of assumptions to test reserves for the following (The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.):

(i) Lapse rates (both base and excess);

(ii) Interest crediting rate strategy;

(iii) Mortality;

(iv) Policyholder dividend strategy;

(v) Competitor or market interest rate;

(vi) Annuitization rates;

(vii) Commissions and expenses; and

(viii) Morbidity.

(2) For assets:

(A) Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;

(B) Investment and disinvestment assumptions;

(C) Source of asset data;

(D) Asset valuation bases~~.~~;

(E) Documentation of assumptions made for (The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum

could form a conclusion as to the reasonableness of the assumptions.):

(i) Default costs;

(ii) Bond call function;

(iii) Mortgage prepayment function;

(iv) Determining market value for assets sold due to disinvestment strategy; and

(v) Determining yield on assets acquired through the investment strategy.

(3) Analysis basis:

(A) Methodology;

(B) Rationale for inclusion/ or exclusion of different blocks of business and how pertinent risks were analyzed;

(C) Rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of "materiality" that was used in determining how rigorously to analyze different blocks of business);

(D) Criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under "moderately adverse conditions" or other conditions as specified in relevant actuarial standards of practice); and

(E) Effect of federal income taxes, reinsurance and other relevant factors.

(4) Summary of material changes in methods, procedures, or assumptions from prior year's asset adequacy analysis; ~~of Results~~

(5) Summary of results; and ~~Conclusion(s)~~

(6) Conclusions.

(c) ~~The memorandum shall include a statement: "Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."~~ **Details of the regulatory asset adequacy issues summary.**

(1) The regulatory asset adequacy issues summary shall include:

(A) Descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserve as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force.

(B) The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different than the assumptions used in the previous asset adequacy analysis;

(C) The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;

(D) Comments on any interim results that may be of significant concern to the appointed actuary;

(E) The methods used by the actuary to recognize the impact of reinsurance on the company's cash flows, including both assets and liabilities, under each of the scenarios tested; and

(F) Whether the actuary has been satisfied that all options whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equity-like features in any investments have been appropriately considered in the asset adequacy analysis.

(2) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

(d) **Conformity to standards of practice.** The memorandum shall include the statement: "Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum."

(e) **Use of assets supporting the interest maintenance reserve and the asset valuation reserve.**

(1) An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the asset valuation reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.

(2) The amount of the assets used for the AVR shall be disclosed in the table of reserves and liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets shall be disclosed in the memorandum.

(f) **Documentation.** The appointed actuary shall retain on file, for at least seven (7) years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

365:10-5-178. Additional considerations for analysis [REVOKED]

~~(a) For the asset adequacy analysis for the statement of actuarial opinion provided in accordance with Rule 365:10-5-176, reserves and assets may be aggregated by either of the following methods:~~

~~(1) Aggregate the reserves and related actuarial items, and the supporting assets, for different products or lines of business, before analyzing the adequacy of the combined assets to mature the combined liabilities. The appointed actuary must be satisfied that the assets held in support of the reserves and related actuarial items so aggregated are managed in such a manner that the cash flows from the aggregated assets are available to help mature the liabilities from the blocks of business that have been aggregated.~~

~~(2) Aggregate the results of asset adequacy analysis of one or more products or lines of business, the reserves for which prove through analysis to be redundant, with the results of one or more products or lines of business, the reserves for which prove through analysis to be deficient.~~

~~(A) The appointed actuary must be satisfied that the asset adequacy results for the various products or lines of business for which the results are so aggregated:~~

~~(i) Are developed using consistent economic scenarios, or~~

~~(ii) Are subject to mutually independent risks, i.e., the likelihood of events impacting the adequacy of the assets supporting the redundant reserves is completely unrelated to the likelihood of events impacting the adequacy of the assets supporting the deficient reserves.~~

~~(B) In the event of any aggregation, the actuary must disclose in his or her opinion that such reserves were aggregated on the basis of method (1), (2)(A)(i) or (2)(A)(ii) above, whichever is applicable, and describe the aggregation in the supporting memorandum.~~

~~(b) The appointed actuary shall analyze only those assets held in support of the reserves which are the subject for specific analysis, hereafter called "specified reserves." A particular asset or portion thereof supporting a group of specified reserves cannot support any other group of specified reserves. An asset may be allocated over several groups of specified reserves. The annual statement value of the assets held in support of the reserves shall not exceed the annual statement value of the specified reserves, except as provided in Rule 365:10-5-178(c) below. If the method of asset allocation is not consistent from year to year, the extent of its inconsistency should be described in the supporting memorandum.~~

~~(c) An appropriate allocation of assets in the amount of the Interest Maintenance Reserve (IMR), whether positive or negative, must be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the Asset Valuation Reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support. The amount of the assets used for the AVR must be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets must be disclosed in the memorandum.~~

~~(d) Interest rates.~~

~~(1) For the purpose of performing the asset adequacy analysis required by this regulation, the qualified actuary is expected to follow standards adopted by the Actuarial Standards Board; nevertheless, the appointed actuary must consider in the analysis the effect of at least the following interest rate scenarios:~~

~~(A) Level with no deviation;~~

~~(B) Uniformly increasing over ten (10) years at a half percent per year and then level;~~

~~(C) Uniformly increasing at one percent per year over five (5) years and then uniformly decreasing at one percent per year to the original level at the end of ten (10) years and then level;~~

~~(D) An immediate increase of three percent (3%) and then level;~~

~~(E) Uniformly decreasing over ten (10) years at a half percent per year and then level;~~

~~(F) Uniformly decreasing at one percent per year over five (5) years and then uniformly increasing at one percent per year to the original level at the end of ten (10) years and then level; and~~

~~(G) An immediate decrease of three percent (3%) and then level.~~

~~(2) For these and other scenarios which may be used, projected interest rates for a five (5) year Treasury Note need not be reduced beyond the point where the five (5) year Treasury Note yield would be at fifty (50%) of its initial level.~~

~~(3) The beginning interest rates may be based on interest rates for new investments as of the valuation date similar to recent investments allocated to support the product being tested or be based on an outside index, such as Treasury yields, of assets of the appropriate length on a date close to the valuation date. Whatever method is used to determine the beginning yield curve and associated interest rates should be specifically defined. The beginning yield curve and associated interest rates should be consistent for all interest rate scenarios.~~

~~(e) The appointed actuary shall retain on file, for at least seven (7) years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.~~

SUBCHAPTER 23. DISCOUNT MEDICAL PLAN ORGANIZATIONS

365:10-23-1. Forms

(a) No discount medical plan organization form delivered for use in the State of Oklahoma shall contain any condition, stipulation or agreement requiring construction according to the laws of any other state or country. Any such condition, stipulation or agreement shall be void, but shall not affect any other form provisions.

(b) As allowed by Section 1219.4(H)(2) of Title 36, the Insurance Department may review and disapprove a form for the following reasons:

(1) If the Insurance Department determines that the form does not comply with the applicable laws of this state; or

(2) If the form is unjust, unfair or inequitable to the discount medical plan organization member.

(c) Within thirty (30) days after any regulatory or statutory change affecting any form used by a discount medical plan organization, the plan shall file an endorsement that brings such forms into compliance. Failure to do so is qualifies as grounds for disciplinary action by the Insurance Commissioner.

365:10-23-2. Inducements.

(a) No discount medical plan organization or any person affiliated with a discount medical plan organization shall, as an inducement to plan participation, provide in any plan for or offer, sell, buy or offer or promise to buy sell, give, promise or allow to the plan member or prospective plan member or to any other person in his behalf in any manner whatsoever:

(1) Any employment;

(2) Any shares of stock or other securities issued or at any time to be issued or any interest therein or rights thereto;

(3) Any advisory board contract or any similar contract, agreement or understanding, offering, providing for, or promising any special profits;

(4) Any prizes, goods, wares, merchandise, or tangible property of an aggregate value in excess of Twenty-Five Dollars ($25.00); or

(5) Any special favor, advantage or other benefit in the payment, method of payment or credit for payment of the plan through the use of credit cards, credit card facilities, credit card lists, or wholesale or retail credit accounts of another person.

(b) No discount medical plan organization, in conjunction with or as part of an offer for plan participation, shall issue, or cause to be issue, any policy of insurance of any type or description upon life, or property, real or person, whenever such policy of insurance is to be furnished of delivered to the purchaser or bailee of any property, real or personal, as an inducement to purchase or bail said property, real or person.

APPENDIX S. OUTLINE OF COVERAGE TABLES [REVOKED]

APPENDIX S. OUTLINE OF COVERAGE [NEW]

[COMPANY NAME]
Outline of Medicare Supplement Coverage-Cover Page: 1 of 2
Benefit Plan(s) _____ [insert letter(s) of plan(s) being offered]

These charts show the benefits included in each of the standard Medicare supplement plans. Every company must make available Plan "A". Some plans may not be available in your state.

See Outlines of Coverage sections for details about ALL plans

BASIC BENEFITS for plans A – J:
Hospitalization: Part A coinsurance plus coverage for 365 additional days after Medicare benefits end.
Medical Expenses: Part B coinsurance (generally 20% of Medicare-approved expenses), or copayments for hospital outpatient services.
Blood: First three pints of blood each year.

A	B	C	D	E	F	F*	G	H	I	J	J*
Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits		Basic Benefits	Basic Benefits	Basic Benefits	Basic Benefits	
		Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance		Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance	Skilled Nursing Facility Co-Insurance	
	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible		Part A Deductible	Part A Deductible	Part A Deductible	Part A Deductible	
		Part B Deductible			Part B Deductible					Part B Deductible	
					Part B Excess (100%)		Part B Excess (80%)		Part B Excess (100%)	Part B Excess (100%)	
		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency		Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	Foreign Travel Emergency	
			At-Home Recovery				At-Home Recovery		At-Home Recovery	At-Home Recovery	
				Preventive Care NOT covered by Medicare						Preventive Care NOT covered by Medicare	

***Plans F and J also have an option called a high deductible plan F and a high deductible plan J. These high deductible plans pay the same benefits as Plans F and J after one has paid a calendar year [$1730] deductible. Benefits from high deductible plans F and J will not begin until out-of-pocket expenses are [$1730]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. These expenses include the Medicare Deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.**

[COMPANY NAME]
Outline of Medicare Supplement Coverage-Cover Page 2

Basic Benefits for Plans K and L include similar services as plans A-J, but cost-sharing for the basic benefits is at different levels.

J	K**	L**
Basic Benefits	100% of Part A Hospitalization Coinsurance plus coverage for 365 Days after Medicare Benefits End 50% Hospice cost-sharing 50% of Medicare-eligible expenses for the first three pints of blood 50% Part B Coinsurance, except 100% Coinsurance for Part B Preventive Services	100% of Part A Hospitalization Coinsurance plus coverage for 365 Days after Medicare Benefits End 75% Hospice cost-sharing 75% of Medicare-eligible expenses for the first three pints of blood 75% Part B Coinsurance, except 100% Coinsurance for Part B Preventive Services
Skilled Nursing Coinsurance	50% Skilled Nursing Facility Coinsurance	75% Skilled Nursing Facility Coinsurance
Part A Deductible	50% Part A Deductible	75% Part A Deductible
Part B Deductible		
Part B Excess (100%)		
Foreign Travel Emergency		
At-Home Recovery		
Preventive Care NOT covered by Medicare		
	$[4000] Out of Pocket Annual Limit***	$[2000] Out of Pocket Annual Limit***

**** Plans K and L provide for different cost-sharing for items and services than Plans A – J.**
Once you reach the annual limit, the plan pays 100% of the Medicare copayments, coinsurance, and deductibles for the rest of the calendar year. The out-of-pocket annual limit does NOT include charges from your provider that exceed Medicare-approved amounts, called "Excess Charges". You will be responsible for paying excess charges.

***The out-of-pocket annual limit will increase each year for inflation.**

See Outlines of Coverage for details and exception.

OUTLINE OF COVERAGE
TABLE 2. REQUIRED ITEMS

PREMIUM INFORMATION [Boldface Type]

We [insert issuer's name] can only raise your premium if we raise the premium for all policies like yours in this State. [If the premium is based on the increasing age of the insured, include information specifying when premiums will change.]

DISCLOSURES [Boldface Type]

Use this outline to compare benefits and premiums among policies.

READ YOUR POLICY VERY CAREFULLY [Boldface Type]

This is only an outline describing your policy's most important features. The policy is your insurance contract. You must read the policy itself to understand all of the rights and duties of both you and your insurance company.

RIGHT TO RETURN POLICY [Boldface Type]

If you find that you are not satisfied with your policy, you may return it to [insert issuer's address]. If you send the policy back to us within 30 days after you receive it, we will treat the policy as if it had never been issued and return all of your payments.

POLICY REPLACEMENT [Boldface Type]

If you are replacing another health insurance policy, do NOT cancel it until you have actually received your new policy and are sure you want to keep it.

NOTICE [Boldface Type]

This policy may not fully cover all of your medical costs.

[for agents:]
Neither [insert company's name] nor its agents are connected with Medicare.

[for direct response:]
[insert company's name] is not connected with Medicare.

This outline of coverage does not give all the details of Medicare coverage. Contact your local Social Security Office or consult "Medicare and You" for more details.

COMPLETE ANSWERS ARE VERY IMPORTANT [Boldface Type]

When you fill out the application for the new policy, be sure to answer truthfully and completely all questions about your medical and health history. The company may cancel your policy and refuse to pay any claims if you leave out or falsify important medical information. [If the policy or certificate is guaranteed issue, this paragraph need not appear.]

Review the application carefully before you sign it. Be certain that all information has been properly recorded.

[Include for each plan prominently identified in the cover page, a chart showing the services, Medicare payments, plan payments and insured payments for each plan, using the same language, in the same order, using uniform layout and format as shown in the charts below. No more than four plans may be shown on one chart. For purposes of illustration, charts for each plan are included in this regulation. An issuer may use additional benefit plan designations on these charts pursuant to 365:10-5-128(d).]

[Include an explanation of any innovative benefits on the cover page and in the chart, in a manner approved by the Commissioner.]

OUTLINE OF COVERAGE
TABLE 3. PLAN A
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

***A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[0]	$[912] (Part A Deductible)
61st thru 90th days	All but $[228] a day	$[228] a day	$[0]
91st day and after: --While using 60 lifetime reserve days	All but $[456] a day	$[456] a day	$[0]
--Once lifetime reserve days are used --Additional 365 days	$[0]	100% of Medicare Eligible Expenses	$[0]**
--Beyond the Additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-Approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th days	All but $[114] a day	$[0]	Up to $ [114] a day
101st day and after	$[0]	$[0]	All costs
BLOOD			
First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$[0]	Balance

****NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN A
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

***Once you have been billed $[100] of Medicare- amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[100] of Medicare Approved Amounts*	$[0]	$[0]	$[100] (Part B Deductible)
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	$[0]	All Costs
BLOOD First 3 pints	$[0]	All costs	$[0]
Next $[100] of Medicare Approved Amounts*	$[0]	$[0]	$[100] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES --Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment First $[100] of Medicare Approved Amounts*	$[0]	$[0]	$[100] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]

OUTLINE OF COVERAGE
TABLE 4. PLAN B
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

***A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[912] (Part A Deductible)	$[0]
61st thru 90th days	All but $[228] a day	$[228] a day	$[0]
91st day and after: --While using 60 lifetime reserve days	All but $[456] a day	$[456] a day	$[0]
--Once lifetime reserve days are used --Additional 365 days	$[0]	100% of Medicare Eligible Expenses	$[0]**
--Beyond the Additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-Approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th days	All but $[100] a day	$[0]	Up to $ [100] a day
101st day and after	$[0]	$[0]	All costs
BLOOD			
First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$[0]	Balance

****NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.**

PLAN B
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

***Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[100] of Medicare Approved Amounts*	$[0]	$[0]	$[100] (Part B Deductible)
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	$[0]	All Costs
BLOOD First 3 pints	$[0]	All costs	$[0]
Next $[100] of Medicare Approved Amounts*	$[0]	$[0]	$[100] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES --Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment First $[110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]

OUTLINE OF COVERAGE
TABLE 5. PLAN C
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

***A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[912] (Part A Deductible)	$[0]
61st thru 90th days	All but $[228] a day	$[228] a day	$[0]
91st day and after: --While using 60 lifetime reserve days	All but $[456] a day	$[456] a day	$[0]
--Once lifetime reserve dates are used --Additional 365 days	$[0]	100% of Medicare Eligible Expenses	$[0]**
--Beyond the Additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-Approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th days	All but $[114] a day	$[0]	Up to $ [114] a day
101st day and after	$[0]	$[0]	All costs
BLOOD			
First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$[0]	Balance

****NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.**

PLAN C
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

***Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment, First $[100] of Medicare Approved Amounts*	$[0]	$[0]	$[100] (Part B Deductible)
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	$[0]	All Costs
BLOOD First 3 pints	$[0]	All costs	$[0]
Next $[100] of Medicare Approved Amounts*	$[0]	$[100] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES --Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment First $[100] of Medicare Approved Amounts*	$[0]	$[100] Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80%	20%	$[0]

(continued)

Plan C
(continued)

OTHER BENEFITS--NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-- NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $[250] each calendar year	$[0]	$[0]	$[250]
Remainder of Charges	$[0]	80% to a lifetime maximum of $[50,000]	20% of amounts over the $[50,000] lifetime maximum

OUTLINE OF COVERAGE
TABLE 6. PLAN D
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

***A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[912] (Part A Deductible)	$[0]
61st thru 90th days	All but $[228] a day	$[228] a day	$[0]
91st day and after: --While using 60 lifetime reserve days	All but $[456] a day	$[456] a day	$[0]
--Once lifetime reserve dates are used --Additional 365 days	$[0]	100% of Medicare Eligible Expenses	$[0]**
--Beyond the Additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-Approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th days	All but $[114] a day	Up to $[114] a day	$ [0]
101st day and after	$[0]	$[0]	All costs
BLOOD			
First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$[0]	Balance

****NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.**

PLAN D
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[100] of Medicare Approved Amounts*	$[0]	$[0]	$[100] (Part B Deductible)
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	$[0]	All Costs
BLOOD			
First 3 pints	$[0]	All costs	$[0]
Next $[100] of Medicare Approved Amounts*	$[0]	$[0]	$[100] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

(continued)

Plan D
(continued)
PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES --Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment First $[100] of Medicare Approved Amounts*	$[0]	$[0]	$[100] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
AT-HOME RECOVERY SERVICES--NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved Home Care Treatment Plan --Benefit for each visit	$[0]	Actual Charges to $[40] a visit	Balance
--Number of visits covered (must be received within 8 weeks of last Medicare Approved visits)	$[0]	Up to the number of Medicare Approved visits, not to exceed 7 each week	
--Calendar year maximum	$[0]	$[1,600]	

OTHER BENEFITS--NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-- NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First $250 each calendar year	$[0]	$[0]	$[250]
Remainder of Charges	$[0]	80% to a lifetime maximum of $[50,000]	20% of amounts over the $[50,000] lifetime maximum

OUTLINE OF COVERAGE
TABLE 7. PLAN E
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

***A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[912] (Part A Deductible)	$[0]
61st thru 90th days	All but $[228] a day	$[228] a day	$[0]
91st day and after: --While using 60 lifetime reserve days	All but $[456] a day	$[456] a day	$[0]
--Once lifetime reserve dates are used --Additional 365 days	$[0]	100% of Medicare Eligible Expenses	$[0]**
--Beyond the Additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-Approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th days	All but $[114] a day	$[0]	Up to $ [114] a day
101st day and after	$[0]	$[0]	All costs
BLOOD			
First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$[0]	Balance

****NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.**

PLAN E
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

***Once you have been billed $[110] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[100] of Medicare Approved Amounts*	$[0]	$[0]	$[100] (Part B Deductible)
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	$[0]	All Costs
BLOOD			
First 3 pints	$[0]	All costs	$[0]
Next $[100] of Medicare Approved Amounts*	$[0]	$[0]	$[100] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES --Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment			
First $[100] of Medicare Approved Amounts*	$[0]	$[0]	$[100] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]

(continued)

Plan E
(continued)

OTHER BENEFITS--NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-- NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $250 each calendar year	$[0]	$[0]	$[250]
Remainder of Charges	$[0]	80% to a lifetime maximum of $[50,000]	20% and amounts over the $[50,000] lifetime maximum
***PREVENTIVE MEDICAL CARE BENEFIT --NOT COVERED BY MEDICARE** Some annual physical and preventive tests and services administered or ordered by your doctor when not covered by Medicare			
First $[120] each calendar year	$[0]	$[120]	$[0]
Additional charges	$[0]	$[0]	All costs

Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare.

OUTLINE OF COVERAGE
TABLE 8. PLAN F or HIGH DEDUCTIBLE PLAN F
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

***A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.**
[This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year [$1730] deductible. Benefits from the high deductible Plan F will not begin until out-of-pocket expenses are [$1730]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.]**

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1730] DEDUCTIBLE,**] YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[912] (Part A Deductible)	$[0]
61st thru 90th days	All but $[228] a day	$[228] a day	$[0]
91st day and after: --While using 60 lifetime reserve days	All but $[456] a day	$ [456] a day	$[0]
--Once lifetime reserve dates are used --Additional 365 days	$[0]	100% of Medicare Eligible Expenses	$[0]***
--Beyond the Additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th days	All but $[114]a day	Up to [114]a day	$[0]
101st day and after	$[0]	$[0]	All costs
BLOOD First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$[0]	Balance

*****NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.**

PLAN F or HIGH DEDUCTIBLE PLAN F
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

***Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.**
[This high deductible plan pays the same or offers the same benefits as Plan F after one has paid a calendar year [$1730] deductible. Benefits from the high deductible Plan F will not begin until out-of-pocket expenses are [$1730]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate foreign travel emergency deductible.]**

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1730] DEDUCTIBLE,**] YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[100] of Medicare Approved Amounts*	$[0]	$[100] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	100%	$[0]
BLOOD			
First 3 pints	$[0]	All costs	$[0]
Next $[100] of Medicare Approved Amounts*	$[0]	$[100] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

(continued)

PLAN F or HIGH DEDUCTIBLE PLAN F

PARTS A & B

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1730] DEDUCTIBLE,**] YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES --Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment First $[100] of Medicare Approved Amounts*	$[0]	$[100] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80%	20%	$[0]

OTHER BENEFITS--NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1730] DEDUCTIBLE,**] YOU PAY
FOREIGN TRAVEL-- NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First $[250] each calendar year	$[0]	$[0]	$[250]
Remainder of Charges	$[0]	80% to a lifetime maximum of $[50,000]	20% and amounts over the $[50,000] life-time maximum

OUTLINE OF COVERAGE
TABLE 9. PLAN G
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

*A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[912] (Part A Deductible)	$[0]
61st thru 90th days	All but $[228] a day	$[228] a day	$[0]
91st day and after: --While using 60 lifetime reserve days	All but $[456] a day	$ [456] a day	$[0]
--Once lifetime reserve dates are used --Additional 365 days	$[0]	100% of Medicare Eligible Expenses	$[0]**
--Beyond the Additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th days	All but $[114]a day	Up to [114]a day	$[0]
101st day and after	$[0]	$[0]	All costs
BLOOD First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$[0]	Balance

****NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.**

PLAN G
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[100] of Medicare Approved Amounts*	$[0]	$[100] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	80%	20%
BLOOD			
First 3 pints	$[0]	All costs	$[0]
Next $[100] of Medicare Approved Amounts*	$[0]	$[0]	$[100] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

(continued)

Plan G
(continued)
PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES --Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment First $[100] of Medicare Approved Amounts*	$[0]	$[0]	$[100] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
AT-HOME RECOVERY SERVICES-- NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved Home Care Treatment Plan --Benefit for each visit	$[0]	Actual charges up to $[40] a visit	Balance
--Number of visits covered (must be received within 8 weeks of last Medicare Approved visit)	$[0]	Up to the number of Medicare Approved visits, not to exceed 7 each week	
--Calendar year maximum	$[0]	$[1,600]	

OTHER BENEFITS--NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-- NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA First $[250] each calendar year	$[0]	$[0]	$[250]
Remainder of Charges	$[0]	80% to a lifetime maximum of $[50,000]	20% and amounts over the $[50,000] lifetime maximum

OUTLINE OF COVERAGE
TABLE 10. PLAN H
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

*A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[912] (Part A Deductible)	$[0]
61st thru 90th days	All but $[228] a day	$[228] a day	$[0]
91st day and after: --While using 60 lifetime reserve days	All but $[456] a day	$ [456] a day	$[0]
--Once lifetime reserve dates are used --Additional 365 days	$[0]	100% of Medicare Eligible Expenses	$[0]**
--Beyond the Additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th days	All but $[114]a day	Up to $[114]a day	$[0]
101st day and after	$[0]	$[0]	All costs
BLOOD			
First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$[0]	Balance

****NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.**

PLAN H
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[100] of Medicare Approved Amounts*	$[0]	$[100] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	$[0]	All Costs
BLOOD First 3 pints	$[0]	All costs	$[0]
Next $[100] of Medicare Approved Amounts*	$[0]	$[0]	$[100] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES --Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment First $110] of Medicare Approved Amounts*	$[0]	$[0]	$[110] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]

(continued)

Plan H
(continued)

OTHER BENEFITS--NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-- NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $[250] each calendar year	$[0]	$[0]	$[250]
Remainder of Charges	$[0]	80% to a lifetime maximum of $[50,000]	20% and amounts over the $[50,000] lifetime maximum

OUTLINE OF COVERAGE
TABLE 11. PLAN I
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

*A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[912] (Part A Deductible)	$[0]
61st thru 90th days	All but $[228] a day	$[228] a day	$[0]
91st day and after: --While using 60 lifetime reserve days	All but $[456] a day	$ [456] a day	$[0]
--Once lifetime reserve dates are used --Additional 365 days	$[0]	100% of Medicare Eligible Expenses	$[0]**
--Beyond the Additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th days	All but $[114]a day	Up to $[114]a day	$[0]
101st day and after	$[0]	$[0]	All costs
BLOOD			
First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$[0]	Balance

****NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.**

PLAN I
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

*Once you have been billed $[100] of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[100] of Medicare Approved Amounts*	$[0]	$[100] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	100%	$[0]
BLOOD			
First 3 pints	$[0]	All costs	$[0]
Next $[100] of Medicare Approved Amounts*	$[0]	$[0]	$[100] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

(continued)

Plan I
(continued)

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
HOME HEALTH CARE			
MEDICARE APPROVED SERVICES			
--Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment			
First $[100] of Medicare Approved Amounts*	$[0]	$[0]	$[100] (Part B Deductible)
Remainder of Medicare Approved Amounts	80%	20%	$[0]
AT-HOME RECOVERY SERVICES--NOT COVERED BY MEDICARE			
Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved Home Care Treatment Plan			
--Benefit for each visit	$[0]	Actual Charges to $[40] a visit	Balance
--Number of visits covered (must be received within 8 weeks of last Medicare Approved visit)	$[0]	Up to the number of Medicare Approved visits, not to exceed 7 each week	
--Calendar year maximum	$[0]	$[1,600]	

(continued)

Plan I
(continued)

OTHER BENEFITS--NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY
FOREIGN TRAVEL-- NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $[250] each calendar year	$[0]	$[0]	$[250]
Remainder of Charges	$[0]	80% to a lifetime maximum of $[50,000]	20% and amounts over the $[50,000] lifetime maximum

OUTLINE OF COVERAGE
TABLE 12. PLAN J or HIGH DEDUCTIBLE PLAN J
MEDICARE (PART A)--HOSPITAL SERVICES--PER BENEFIT PERIOD

*A benefit period begins on the first day you receive services as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.
[**This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year [$1730] deductible. Benefits from the high deductible Plan J will not begin until out-of-pocket expenses are [$1730]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's separate outpatient prescription drug deductible or the plan's separate foreign travel emergency deductible.]

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1730] DEDUCTIBLE,**] YOU PAY
HOSPITALIZATION* Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[912] (Part A Deductible)	$[0]
61st thru 90th days	All but $[228] a day	$[228] a day	$[0]
91st day and after: --While using 60 lifetime reserve days	All but $[456] a day	$ [456] a day	$[0]
--Once lifetime reserve dates are used --Additional 365 days	$[0]	100% of Medicare Eligible Expenses	$[0]***
--Beyond the Additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE* You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th days	All but $[114]a day	Up to $[114]a day	$[0]
101st day and after	$[0]	$[0]	All costs
BLOOD			
First 3 pints	$[0]	3 pints	$[0]
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	All but very limited co-insurance for outpatient drugs and inpatient respite care	$0	Balance

*****NOTICE: When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.**

PLAN J or HIGH DEDUCTIBLE PLAN J
MEDICARE (PART B)--MEDICAL SERVICES--PER CALENDAR YEAR

*Once you have been billed $[100]of Medicare-Approved amounts for covered services (which are noted with an asterisk), your Part B Deductible will have been met for the calendar year.
[**This high deductible plan pays the same or offers the same benefits as Plan J after one has paid a calendar year [$1730] deductible. Benefits from the high deductible Plan J will not begin until out-of-pocket expenses are [$1730]. Out-of-pocket expenses for this deductible are expenses that would ordinarily be paid by the policy. This includes the Medicare deductibles for Part A and Part B, but does not include the plan's foreign travel emergency deductible.]

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1730] DEDUCTIBLE,**] YOU PAY
MEDICAL EXPENSES -- IN OUR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[100] of Medicare Approved Amounts*	$[0]	$[100] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80% (Generally)	20% (Generally)	$[0]
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	100%	$[0]
BLOOD			
First 3 pints	$[0]	All costs	$[0]
Next $[100] of Medicare Approved Amounts*	$[0]	$[100] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80%	20%	$[0]
CLINICAL LABORATORY SERVICES-- TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

(continued)

Plan J or HIGH DEDUCTIBLE PLAN J
(continued)

PARTS A & B

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1730] DEDUCTIBLE,**] YOU PAY
HOME HEALTH CARE MEDICARE APPROVED SERVICES --Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
--Durable medical equipment First $[100] of Medicare Approved Amounts*	$[0]	$[100] (Part B Deductible)	$[0]
Remainder of Medicare Approved Amounts	80%	20%	$[0]
AT-HOME RECOVERY SERVICES--NOT COVERED BY MEDICARE Home care certified by your doctor, for personal care during recovery from an injury or sickness for which Medicare approved Home Care Treatment Plan --Benefit for each visit	$[0]	Actual Charges to $[40] a visit	Balance
--Number of visits covered (must be received within 8 weeks of last Medicare Approved visit)	$[0]	Up to the number of Medicare Approved visits, not to exceed 7 each week	
--Calendar year maximum	$[0]	$[1,600]	

(continued)

Plan J or HIGH DEDUCTIBLE PLAN J
(continued)

PARTS A & B (continued)

OTHER BENEFITS--NOT COVERED BY MEDICARE

SERVICES	MEDICARE PAYS	[AFTER YOU PAY $[1730] DEDUCTIBLE,**] PLAN PAYS	[IN ADDITION TO $[1730] DEDUCTIBLE,**] YOU PAY
FOREIGN TRAVEL-- NOT COVERED BY MEDICARE Medically necessary emergency care services beginning during the first 60 days of each trip outside the USA			
First $[250] each calendar year	$[0]	$[0]	$[250]
Remainder of Charges	$[0]	80% to a lifetime maximum of $[50,000]	20% and amounts over the $[50,000] lifetime maximum
***PREVENTIVE MEDICAL CARE BENEFIT--NOT COVERED BY MEDICARE** Some annual physical and preventive tests and services administered or ordered by your doctor when not covered by Medicare			
First $[120] each calendar year	$[0]	$[120]	$[0]
Additional charges	$[0]	$[0]	All Costs

***Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare.*

OUTLINE OF COVERAGE
TABLE 13. PLAN K

* You will pay half the cost-sharing of some covered services until you reach the annual out-of-pocket limit of $[4000] each calendar year. The amounts that count toward your annual limit are noted with diamonds (♦) in the chart below. Once you reach the annual limit, the plan pays 100% of your Medicare copayment and coinsurance for the rest of the calendar year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

**** A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.**

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOSPITALIZATION** Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[456](50% of Part A deductible)	$[456](50% of Part A deductible)♦
61st thru 90th day	All but $[228] a day	$[228] a day	$[0]
91st day and after:			
—While using 60 lifetime reserve days	All but $[456] a day	$[456] a day	$[0]
—Once lifetime reserve days are used:			
—Additional 365 days	$[0]	100% of Medicare eligible expenses	$[0]***
—Beyond the additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE** You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility Within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th day	All but $[100] a day	Up to $[57] a day	Up to $[57] a day ♦
101st day and after	$[0]	$[0]	All costs
BLOOD			
First 3 pints	$[0]	50%	50%♦
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	Generally, most Medicare eligible expenses for out-patient drugs and inpatient respite care	50% of coinsurance or copayments	50% of coinsurance or copayments♦

(continued)

*** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN K

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

**** Once you have been billed $[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[100] of Medicare Approved Amounts****	$[0]	$[0]	$[100] (Part B deductible)**** ♦
Preventive Benefits for Medicare covered services	Generally 75% or more of Medicare approved amounts	Remainder of Medicare approved amounts	All costs above Medicare approved amounts
Remainder of Medicare Approved Amounts	Generally 80%	Generally 10%	Generally 10% ♦
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	$[0]	All costs (and they do not count toward annual out-of-pocket limit of [$4000])*
BLOOD			
First 3 pints	$[0]	50%	50%♦
Next $[100] of Medicare Approved Amounts****	$[0]	$[0]	$[100] (Part B deductible)**** ♦
Remainder of Medicare Approved Amounts	Generally 80%	Generally 10%	Generally 10% ♦
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

(continued)

* This plan limits your annual out-of-pocket payments for Medicare-approved amounts to $[4000] per year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

PLAN K

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
—Durable medical equipment First $[100] of Medicare Approved Amounts*****	$[0]	$[0]	$[100] (Part B deductible) ♦
Remainder of Medicare Approved Amounts	80%	10%	10%♦

*****Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare.*

OUTLINE OF COVERAGE
TABLE 14. PLAN L

* You will pay one-fourth of the cost-sharing of some covered services until you reach the annual out-of-pocket limit of $[2000] each calendar year. The amounts that count toward your annual limit are noted with diamonds (♦) in the chart below. Once you reach the annual limit, the plan pays 100% of your Medicare copayment and coinsurance for the rest of the calendar year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

MEDICARE (PART A)—HOSPITAL SERVICES—PER BENEFIT PERIOD

** A benefit period begins on the first day you receive service as an inpatient in a hospital and ends after you have been out of the hospital and have not received skilled care in any other facility for 60 days in a row.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOSPITALIZATION** Semiprivate room and board, general nursing and miscellaneous services and supplies			
First 60 days	All but $[912]	$[684] (75% of Part A deductible)	$[228] (25% of Part A deductible)♦
61st thru 90th day	All but $[228] a day	$[228] a day	$[0]
91st day and after:			
—While using 60 lifetime reserve days	All but $[456] a day	$[456] a day	$[0]
—Once lifetime reserve days are used:			
—Additional 365 days	$[0]	100% of Medicare eligible expenses	$[0]***
—Beyond the additional 365 days	$[0]	$[0]	All costs
SKILLED NURSING FACILITY CARE** You must meet Medicare's requirements, including having been in a hospital for at least 3 days and entered a Medicare-approved facility Within 30 days after leaving the hospital			
First 20 days	All approved amounts	$[0]	$[0]
21st thru 100th day	All but $[100] a day	Up to $[85.50] a day	Up to $[28.50] a day♦
101st day and after	$[0]	$[0]	All costs
BLOOD			
First 3 pints	$[0]	75%	25%♦
Additional amounts	100%	$[0]	$[0]
HOSPICE CARE Available as long as your doctor certifies you are terminally ill and you elect to receive these services	Generally, most Medicare eligible expenses for out-patient drugs and inpatient respite care	75% of coinsurance or copayments	25% of coinsurance or copayments ♦

(continued)

*** **NOTICE:** When your Medicare Part A hospital benefits are exhausted, the insurer stands in the place of Medicare and will pay whatever amount Medicare would have paid for up to an additional 365 days as provided in the policy's "Core Benefits." During this time the hospital is prohibited from billing you for the balance based on any difference between its billed charges and the amount Medicare would have paid.

PLAN L

MEDICARE (PART B)—MEDICAL SERVICES—PER CALENDAR YEAR

**** Once you have been billed $[100] of Medicare-approved amounts for covered services (which are noted with an asterisk), your Part B deductible will have been met for the calendar year.

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
MEDICAL EXPENSES— IN OR OUT OF THE HOSPITAL AND OUTPATIENT HOSPITAL TREATMENT, such as Physician's services, inpatient and outpatient medical and surgical services and supplies, physical and speech therapy, diagnostic tests, durable medical equipment,			
First $[100] of Medicare Approved Amounts****	$[0]	$[0]	$[100] (Part B deductible)**** ♦
Preventive Benefits for Medicare covered services	Generally 75% or more of Medicare approved amounts	Remainder of Medicare approved amounts	All costs above Medicare approved amounts
Remainder of Medicare Approved Amounts	Generally 80%	Generally 15%	Generally 5% ♦
Part B Excess Charges (Above Medicare Approved Amounts)	$[0]	$[0]	All costs (and they do not count toward annual out-of-pocket limit of [$2000])*
BLOOD			
First 3 pints	$[0]	75%	25%♦
Next $[110] of Medicare Approved Amounts****	$[0]	$[0]	$[100] (Part B deductible)♦
Remainder of Medicare Approved Amounts	Generally 80%	Generally 15%	Generally 5%♦
CLINICAL LABORATORY SERVICES—TESTS FOR DIAGNOSTIC SERVICES	100%	$[0]	$[0]

(continued)

* This plan limits your annual out-of-pocket payments for Medicare-approved amounts to $[2000] per year. **However, this limit does NOT include charges from your provider that exceed Medicare-approved amounts (these are called "Excess Charges") and you will be responsible for paying this difference in the amount charged by your provider and the amount paid by Medicare for the item or service.**

PLAN L

PARTS A & B

SERVICES	MEDICARE PAYS	PLAN PAYS	YOU PAY*
HOME HEALTH CARE MEDICARE APPROVED SERVICES			
—Medically necessary skilled care services and medical supplies	100%	$[0]	$[0]
—Durable medical equipment First $[100] of Medicare Approved Amounts*****	$[0]	$[0]	$[100] (Part B deductible)♦
Remainder of Medicare Approved Amounts	80%	15%	5% ♦

*****Medicare benefits are subject to change. Please consult the latest *Guide to Health Insurance for People with Medicare.*

APPENDIX Z. FORM TABULATING RESERVES AND RELATED ACTUARIAL TERMS [REVOKED]

APPENDIX Z. ASSET ADEQUACY TEST AMOUNTS - RESERVES AND LIABILITIES [NEW]

	Asset Adequacy Tested Amounts		Reserves and Liabilities		
Statement Item	**Formula Reserves (1)**	**Additional Actuarial Reserves (a) (2)**	**Analysis Method (b)**	**Other Amount (3)**	**Total Amount (1)+(2)+(3) (4)**
Exhibit 8 A Life Insurance					
B Annuities					
C Supplementary Contracts Involving Life Contingencies					
D Accidental Death Benefit					
E Disability - Active					
F Disability - Disabled					
G Miscellaneous					
Total (Exhibit 8 Item 1, Page 3)					
Exhibit 9 A Active Life Reserve					
B Claim Reserve					
Total (Exhibit 9 Item 2, Page 3)					

Exhibit 10 Premiums and Other Deposit Funds (Column 5, Line 14)					
Guaranteed Interest Contracts (Column 2, Line 14)					
Other Deposit Funds (Column 6, Line 14)					
Supplementary Contracts and Annuities Certain (Column 3, Line 14)					
Dividend Accumulations or Refunds (Column 4, Line 14)					
Total Exhibit 10 (Column 1, Line 14)					
Exhibit 11 Part 1 1 Life (Page 3, Line 4.1)					
2 Health (Page 3, Line 4.2)					
Total Exhibit 11, Part 1					
Separate Accounts (Page 3 of the Annual Statement of the Separate Accounts, Lines 1, 2, 3.1, 3.2, 3.3)					
TOTAL RESERVES					

IMR (General Account, Page ___ Line ___)	
(Separate Accounts, Page____Line____)	

AVR (Page ___ Line ___)	(c)
Net Deferred and Uncollected Premium	

Notes:

(a) The additional actuarial reserves are the reserves established under Rule 365:10-5-173(e)(2).
(b) The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in Rule 365:10-5-173(d), by means of symbols which should be defined in footnotes to the table.
(c) Allocated amount of Asset Valuation Reserve (AVR).

APPENDIX GG. INFORMATION PROVIDED PURSUANT TO SECTION 365:10-5-176(F)(1)(C)(II) OF THE ACTUARIAL OPINION AND MEMORANDUM REGULATION [NEW]

The information provided pursuant to Section 365:10-5-176(f)(1)(C)(ii) of the Actuarial Opinion and Memorandum Regulation shall be at least:

(1) Product Type	(2) Death Benefit or Account Value	(3) Reserves Held	(4) Codification Reserves	(5) Codification Standard

[OAR Docket #06-1099; filed 5-26-06]

TITLE 365. INSURANCE DEPARTMENT CHAPTER 15. PROPERTY AND CASUALTY

[OAR Docket #06-1100]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
365:15-1-3. Property and casualty form filings [AMENDED]
Subchapter 7. Property And Casualty Competitive Loss Cost Rating Regulation
365:15-7-3. Property and casualty rate, loss cost and manual rule filings [AMENDED]
365:15-7-14. Delivery of policy to insured [AMENDED]
365:15-7-29. Workers' Compensation Insurance [NEW]
Appendix D. Notification of Policyholders of Application for Rate Change [REVOKED]
Appendix D. Format for Notification To Policyholders of Application for Rate Change [NEW]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1 and 6821
DATES:
Comment period:
February 2, 2006, to March 3, 2006
Public hearing:
March 3, 2006
Adoption:
March 31, 2006
Submitted to Governor:
March 31, 2006
Submitted to House:
March 31, 2006
Submitted to Senate:
March 31, 2006
Gubernatorial approval:
May 15, 2006
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on May 25, 2006
Final adoption:
May 25, 2006
Effective:
July 14, 2006
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed amendments to Rules 365:15-1-3 and 365:15-7-3 clarify the number of copies and material required for property and casualty form and rate/rule filings. Also, the proposed amendments to Rules 365:15-1-3 and 365:15-7-14 correct typographical errors in the rules. Proposed new Rule 365:15-7-29 caps the maximum debits/credits for all schedule rating plans. The proposed amendments to Appendix D of Chapter 15 set out that requests for hearing by policyholders should be directed to the Property and Casualty Division of the Insurance Department to help assure proper handling of the request.
CONTACT PERSON:
Karl F. Kramer, First Assistant General Counsel, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

365:15-1-3. Property and casualty form filings

(a) **Purpose.** The purpose of this section is to specify the procedures for submitting form filings to the Insurance Commissioner as required by Article 36 of the Insurance Code.

(b) **Procedures.** Policy forms, endorsements and revisions thereto, by insurance companies and rating organizations licensed in Oklahoma, shall be submitted in compliance with this section, or shall be rejected for filing, and the entity ~~which~~that made such submission shall be so notified.

(1) **Filing requirements.** The Insurance Code, Article 36, requires that each insurer shall make its form filings by line of business directly with the Insurance Commissioner. Companies may satisfy their obligation to make such filings, where authorized by law, by becoming a member or subscriber to an Oklahoma licensed rating organization ~~which~~that makes such filings.

(2) **Filing fees.**

(A) Form filings shall be accompanied by the proper fees as specified in the Insurance Code.

(B) Filings for groups of insurers shall be accompanied by the specified fee for each transaction, regardless of the number of members or subscribers.

(C) Filings by rating organizations shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(D) Filing fees are not required for transactions that involve only the following:

(i) Error corrections.

(ii) Informational filings (not required to be filed).

(iii) Change in effective date for approved filing.

(iv) Final printing of approved forms.

(v) Additional information or amendments to pending filings.

(vi) Withdrawal of obsolete forms having no impact on Oklahoma policyholders.

(vii) Change in officer or signature for approved filing.

(viii) Change in company logo for approved filing.

(ix) Changing the effective date for advisory organization filings by members or subscribers.

(x) Nonadoption of advisory organization filings that would be a duplication of a filing in effect for the filer.

(3) **Address requirements.** All filings shall be addressed as follows: Oklahoma Insurance Commissioner, P.O. Box 53408, Oklahoma City, OK 73152-3408.

(4) **Number of copies.** All filings including the cover letter, all exhibits, forms and additional information submitted to the Insurance Commissioner shall be submitted with two (2) legible copies of all material. Such filings and exhibits shall be typewritten or printed. Companies that file as a group listing all companies on the transmittal letter may accomplish this requirement by submitting two (2) legible copies of all material. ~~plus one additional~~

~~copy of the completed transmittal forms only for each additional insurer~~.

(5) **Effective date of filings.** The effective date of form filings and the dates of required action by the Insurance Commissioner are governed by the applicable provisions of the Insurance Code.

(6) **Notice of Insurance Commissioner action.** The Insurance Commissioner shall indicate action taken in writing, one (1) copy of which shall be attached to the official file copy and one (1) copy transmitted to the filing entity, or action may be indicated by stamp, with the individual stamping same, placing his initial or signature thereunder. Responses to questions shall be submitted in writing with two legible copies of all material. Nothing in this section shall preclude the Insurance Commissioner from the use of other forms of communication to secure information from the filing entity.

(7) **Life, accident and health insurance.** This section does not apply to Life, Accident and Health. Life, Accident and Health filings shall be made in accordance with the applicable provisions of the Insurance Code and Rules of the Insurance Commissioner.

(8) **Postage requirements.** No submissions shall be accepted which arrive at the offices with postage due. No submissions will be returned unless the necessary postage accompanies the same.

(9) **Filing form and content.** All filings shall contain the following:

(A) The name of the filing entity and complete mailing address to which correspondence shall be sent.

(B) A "RE" or "caption" briefly describing the content and context of the filing.

(C) A list or index of the forms filed in the filing letter or attached thereto including the form numbers and edition date, if applicable.

(D) A complete description and full explanation of the changes made by the filing including, reasoning therefor, illustrative examples, including "John Doe" specimen form, and a comparison of currently approved and proposed materials (side by side comparison).

(E) A concise statement to identify the form to be replaced by the filing including the approval date in this jurisdiction and the identifying filing number of the filing containing the form to be replaced as assigned by the Insurance Department.

(F) If a form is being withdrawn or amended due to court decisions in any jurisdiction, the filing entity shall furnish the legal citation, and if from another jurisdiction, a copy of such decision or opinion with its filing.

(G) If a form filing is due to a federal law or regulation of a federal agency, the filing entity shall furnish the legal citation and a copy of the pertinent provisions.

(H) Completed transmittal forms and exhibits.

(10) **Withdrawal of pending filings.** Pending filings may be withdrawn by the filing entity upon notice to the Insurance Commissioner prior to the approval or disapproval thereof.

(11) **Duration of filings.** All filings are in effect until withdrawn by the insurer or rating organization, with approval of the Insurance Commissioner or until abrogated by the Insurance Commissioner.

(12) **Bureau deviations.** Every member of, or subscriber to, a licensed rating organization may adhere to any filings made on its behalf by its Rating Organization, except that any such member or subscriber may deviate from such filings as authorized by this section if it has filed with the Rating Organization and with the Insurance Commissioner, the deviation to be applied and information necessary to justify the deviation. If such deviation is approved, it shall remain in force until such approval is withdrawn by the insurer with approval of the Insurance Commissioner.

(13) **Group filings.** Where filings are made on behalf of more than one insurer, a designation shall list the insurer or insurers by individual name and not by Company group.

(14) **Members of or subscribers to a licensed rating organization.**

(A) **Filings.** A licensed rating organization may make filings on behalf of its members and subscribers except deviation filings.

(B) **Adherence to filings.** Every member of or subscriber to a licensed rating organization may adhere to any filings made on its behalf by such organization except that any such member or subscriber may deviate from such filings upon compliance with this section and approval of the Insurance Commissioner

(C) **Individual company filings.** Members and subscribers shall not file individual forms that have been filed on their behalf by the appropriate rating organization. Declaration pages, policy "jackets" and other forms not normally filed by the rating organization should be filed by the insurer directly with the Insurance Commissioner.

(D) **Filing requirements; bureau form deviation.** If form deviations are proposed, file form including supporting data with the Insurance Commissioner and furnish copies to the appropriate rating organization.

(E) **Agency filings.** "Agency Filings" by a Rating Organization on behalf of its members or subscribers shall be accepted by the Insurance Commissioner in instances where the rating organization does not have a filing in effect for the coverage involved.

(15) **Independent filings.** If the insurer is not a member or subscriber of a bureau for the kind and line of insurance involved, filing shall comply with the following:

(A) File Policy Forms, Endorsements, and other materials, with the Insurance Commissioner and designate them as "Independent Filings".

(B) File support of each filing in accordance with this section.

(C) For revisions, file form with the Insurance Commissioner.

(16) **Reference filings; rating organization filings.**

(A) **Filings permitted without reference filing agreement.** Rating Organization forms used in whole or in part may be adopted by "Reference Filings" subject to the approval of the Insurance Commissioner. When making such type filing submit a filing memorandum identifying the forms used. Departures and exceptions, if any, shall be accompanied by the necessary supporting data. Such adoption shall apply only to current filings and shall have no automatic effect as to future filings. Each rating organization filing shall be separately and specifically adopted.

(B) **Filings permitted with reference filing agreement.** Approved Rating Organization material may be adopted by filing a REFERENCE FILING AGREEMENT with the Insurance Commissioner identifying the forms and material to be used. Such adoption shall apply from the date it is approved by the Insurance Commissioner to filings in effect on that date and to all applicable future filings. It shall remain in effect until such time as the agreement is withdrawn with the approval of the Commissioner.

(C) **Reference filing.** If filing by "Reference Filing" DO NOT file forms.

(17) **Resubmittal of filings.** All resubmissions of disapproved or rejected filings shall be presented to the Insurance Commissioner in the same manner as required by this section for an original filing. In addition the cover letter or completed transmittal forms addressed to the Insurance Commissioner shall state the full and complete history of the filing, the reason for disapproval or rejection, and the factors which distinguish the resubmittal so it warrants reconsideration.

(18) **Retroactive filings.** The Insurance Commissioner has no authority to and shall not approve filings proposing a retroactive effective date except in cases of a filing correcting an error in a previously approved filing and in cases where required or necessitated by Statute.

(19) **Delivery of policy to insured.** In any instance whereby a policy of insurance is effected the insured ~~insurance~~ shall be furnished with either:

(A) The original policy;

(B) A copy of the original policy or a duplicate policy printed with ten point or larger type; or

(C) A certificate including provisions and conditions of the original policy printed with ten point or larger type.

(20) **Coverage elimination after policy issuance.** Any endorsement which eliminates or restricts coverage and which is issued during the policy term shall be identified as accepted by the insured, by the signature of the insured thereon, and a signed copy (original, computer generated or microfilm) of such endorsement shall be retained in the files of the insurer for one year after the expiration of the policy.

(21) **Uniform standard mortgage clause.** The mortgage clause to be used by Insurance Companies in Oklahoma shall be uniform Standard Form Number 127B September 1934 Edition or subsequent editions, except upon written application by an insurer or rating organization, a cause providing broader coverage may be approved by the Insurance Commissioner.

(22) **Claims-made policies.**

(A) The policy application and the Declarations page of each claims-made policy shall include a conspicuous notice indicating that the contract is a claims-made policy and advising the policyholder to read its provisions.

(B) The policy shall provide for extended reporting period options based on rules, rates or rating plans approved by the State Board for Property and Casualty Rates or the Insurance Commissioner.

(23) **New forms, reductions in coverage.**

(A) Form filings that may result in the elimination of claims (losses) shall be considered as a relevant factor to be given due consideration by the State Board for Property and Casualty Rates or the Insurance Commissioner as respects rates in effect or proposed for the coverage involved.

(B) The filer shall fully disclose the rate consideration so that the Board or Commissioner can be notified of the form filing. The form filing may be disapproved if the rate effect has not been considered in rules, rates or rating plans approved by the Board.

SUBCHAPTER 7. PROPERTY AND CASUALTY COMPETITIVE LOSS COST RATING REGULATION

365:15-7-3. Property and casualty rate, loss cost and manual rule filings

(a) **Purpose.** The purpose of this section is to specify the procedures for submitting rate, loss cost and manual rule filings to the Insurance Commissioner as required by 36 O.S. § 981 et seq.

(b) **Procedures.** Rate, loss cost and manual rules and revisions thereto by insurance companies and advisory organizations licensed in Oklahoma shall be submitted in compliance with this section, or shall be rejected for filing, and the entity that made such submission shall be so notified.

(1) **Filing requirements.** The Insurance Code, 36 O.S. § 981 et seq., requires that each insurer shall make its rate, loss cost and manual rule filings by line of business directly with the Insurance Commissioner. Companies may satisfy their obligation to make such filings, where authorized by law, by becoming a member or subscriber to an Oklahoma licensed advisory organization which makes such filings.

(2) **Filing fees.**

(A) Rate, loss cost and manual rule filings shall be accompanied by the proper fees as specified in the Insurance Code.

(B) Filings for groups of insurers shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(C) Filings by rating organizations shall be accompanied by the specified fee for each transaction regardless of the number of members or subscribers.

(D) Filing fees are not required for transactions that involve only the following:

(i) Excess consent rate filings;

(ii) Individual risk submissions;

(iii) Individual risk filings for excess workers' compensation;

(iv) Changing the effective date for advisory organization filings by members or subscribers;

(v) Additional information or amendments to pending filings;

(vi) Advising effective date for approved filing and/or submitting final printed materials;

(vii) Dividend plans;

(viii) Informational filings (not required to be filed);

(ix) Withdrawal of obsolete filings having no impact on Oklahoma policyholders; and/or

(x) Nonadoption of advisory organization filings that would be a duplication of a filing in effect for the filer.

(3) **Address requirements.** All filings shall be addressed as follows: Oklahoma Insurance Commissioner, P.O. Box 53408, Oklahoma City, OK 73152-3408.

(4) **Number of copies.** All filings including the cover letter, all exhibits, rate sheets and additional information submitted to the Insurance Commissioner shall be submitted with two (2) legible copies of all material. Such filings and exhibits shall be typewritten or printed. Companies that file as a group listing all companies on the transmittal letter may accomplish this requirement by submitting two (2) legible copies of all material. ~~plus one additional copy of the completed transmittal forms only for each additional insurer~~.

(5) **Effective date of filings.** The effective date of rate, loss cost and manual rule filings and the dates of required action by the Insurance Commissioner are governed by the applicable provisions of the Insurance Code.

(6) **Notice of Insurance Commissioner action.** The Insurance Commissioner shall indicate action taken in writing, one (1) copy of which shall be attached to the official file copy and one (1) copy transmitted to the filing entity, or action may be indicated by stamp, with the individual stamping same, placing their initial or signature thereunder. Responses to questions shall be submitted in writing two legible copies of all material. Nothing in this section shall preclude the Insurance Commissioner from the use of other forms of communication to secure information from the filing entity.

(7) **Life, accident and health insurance.** This section does not apply to life, accident and health insurance. Life, accident and health insurance filings shall be made in accordance with the applicable provisions of the Insurance Code and Rules of the Insurance Commissioner.

(8) **Postage requirements.** No submissions shall be accepted that arrive at the offices with postage due. No submissions will be returned unless the necessary postage accompanies the same.

(9) **Withdrawal of pending filings.** Pending filings may be withdrawn by the filing entity upon notice to the Insurance Commissioner prior to the approval or disapproval thereof.

(10) **Filing form and content.** All filings shall include the following:

(A) The name of the filing entity and complete mailing address to which correspondence shall be sent.

(B) A "RE" or "caption" briefly describing the content and context of the filing.

(C) A list or index of the manual pages filed in the filing letter or attached thereto including the page numbers and edition date, if applicable.

(D) A complete description and full explanation of the changes made by the filing including, reasoning therefor, illustrative examples, including "John Doe" specimen examples, and a comparison of currently approved and proposed materials (side by side comparison).

(E) A concise statement to identify the manual pages (rate and/or rule) to be replaced by the filing including the approval date in this jurisdiction and the identifying Oklahoma Insurance Department's assigned filing number of the filing containing the documents to be replaced .

(F) Completed transmittal forms and exhibits.

365:15-7-14. Delivery of policy to insured.

In any instance whereby a policy of insurance is effected, the insured ~~insurance~~ shall be furnished with either:

(1) The original policy;

(2) A copy of the original policy or a duplicate policy printed with ten-point or larger type; or

(3) A certificate including provisions and conditions of the original policy printed with ten-point or larger type.

365:15-7-29. Workers' Compensation Insurance

All schedule rating plans shall cap the maximum debits/credits applied at twenty-five percent (25%).

APPENDIX D. NOTIFICATION OF POLICYHOLDERS OF APPLICATION FOR RATE CHANGE [REVOKED]

APPENDIX D. FORMAT FOR NOTIFICATION TO POLICYHOLDERS OF APPLICATION FOR RATE CHANGE [NEW]

NOTICE OF RATE CHANGE APPLICATION

TO ALL INSUREDS OF [medical professional liability insurer name]

On [rate change application filing date], [medical professional liability insurer name] filed a Rate Change Application with the Oklahoma Insurance Department, seeking approval of a [percentage] increase in its medical professional liability rates. The proposed effective date of this rate change will be [effective date]. Policyholders are entitled to notice of the Rate Change Application pursuant to Section 6821(C) of Title 36 of the Oklahoma Insurance Code.

[Medical professional liability insurer name] has the burden of proving that the requested change is justified and meets the requirements of Section 6821. You or your representative may request a hearing by the Oklahoma Insurance Department on the Application. The hearing request must be in writing and must be received by the Insurance Department within forty-five (45) days of the date of this notice. Requests for a hearing must be addressed to the Oklahoma Insurance Department, Attn: Property and Casualty Division, P. O. Box 53408, Oklahoma City, OK 73152-3408. The scope of the hearing will be limited to the items mentioned by Section 6821. Written requests for a hearing and written comments about the proposed change become public record and are subject to the Oklahoma Open Records Act.

No professional medical liability insurer shall cancel or refuse to renew coverage of a policyholder on the basis of a policyholder's exercise of any right pursuant to Section 6821.

Specific questions about the circumstances that produced the Rate Change Application should be directed to [medical professional liability insurer contact person, contact information]. Questions about the details of the Application should be directed to the Oklahoma Insurance Department's Property and Casualty Rates Division.

Sincerely,

[medical professional liability insurer contact information].

[OAR Docket #06-1100; filed 5-26-06]

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

[OAR Docket #06-1101]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Agents, Brokers, Adjusters and Limited Representatives
365:25-3-1. Insurance agents continuing education [AMENDED]
Subchapter 5. Bail Bondsmen
Part 5. General Provisions Pertaining to Bail Bondsmen
365:25-5-41. Special deposit [AMENDED]
AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1 and 59 O.S. § 1302(A)
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ANALYSIS:
The proposed amendments to subsection (d) of Rule 365:25-3-1 provide that producer continuing education courses provided by national professional associations are deemed approved if the association is an approved provider of continuing education. The amendments to the bail bond special deposit rule, Rule 365:25-5-41, set out the ratio for the special deposit required of insurers writing bail bonds in Oklahoma setting the ratio at a level that is commensurate with the level of protection the public needs.
CONTACT PERSON:
Karl F. Kramer, First Assistant General Counsel, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2006:

SUBCHAPTER 3. AGENTS, BROKERS AND LIMITED REPRESENTATIVES

365:25-3-1. Insurance agents continuing education

(a) **Purpose.** The purpose of this section is to set forth the requirements for continuing education which an insurance agent must meet and to set forth the requirements for approval by the Insurance Commissioner of a proposed continuing education course.

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

(1) **"CEC"** means continuing education credit.

(2) **"Certificate of course completion"** means a document acceptable to the Commissioner which signifies satisfactory completion of the course and reflects hours of credit earned.

(3) **"Continuing Education Advisory Committee"** means the committee established by the Commissioner for the purpose of reviewing and recommending approval or disapproval of continuing education courses.

(4) **"Credit hour"** means at least a fifty (50) minute classroom instructional session unless a correspondence or self-study course.

(5) **"Instructor"** means a person who presents course materials approved for continuing education credit hours, and who has experience, training, and/or education in the course subject matter and has been approved by the Commissioner.

(6) **"Instructor Qualification Form"** means a form acceptable to the Commissioner and completed by the instructor which documents qualifications of the instructor.

(7) **"Licensee"** means a natural person who is licensed by the Commissioner as an insurance agent.

(8) **"Provider"** means a person, corporation, professional association or its local affiliates, an insurance company or any other entity which is approved by the Commissioner and provides approved continuing education to insurance agents.

(9) **"Provider Continuing Education Reporting Form"** means a form acceptable to the Commissioner and completed by the provider which documents completion of an approved course by an agent or agents.

(c) **Exceptions.** The requirements for continuing education in this section shall not apply to:

(1) limited insurance representatives.

(2) a non-resident agent who resides and is licensed in a state or district having continuing education requirements and the agent meets all the requirements of that state or district to practice therein. The non-resident agent shall be responsible for completing any reporting requirements necessary to verify completion.

(3) a non-resident agent of a state that does not require continuing education hours may fulfill the requirements of any other state's continuing education requirements and shall be deemed to have complied with this rule upon proof of completion of said hours

(d) **Continuing education requirements.**

(1) **CEC during twenty-four month period.** All licensees shall complete the required hours of continuing education as set forth in 36 O.S. § 1435.29 during each

twenty-four month period. The twenty-four month period begins the first day of the month following the month in which the license is granted. The credit hours completed must be in those lines in which the agent is licensed.

(2) **Certificates of course completion required for license renewal.** If requested by the Insurance Department, each agent shall submit upon each licensing renewal certificate(s) of course completion as approved by the Insurance Department, which verify courses completed during the previous twenty-four month period.

(3) **Credits carried over.** Credit hours in excess of the minimum twenty-four month period requirement will not carry forward. However, excess hours may be applied to bring a lapsed license into compliance.

(4) **Ethics credits.** During each twenty-four (24) month period, the agent shall complete two (2) credit hours but no more than four (4) credit hours of instruction in ethics out of the total credit hours required. The remainder of the hours required must be in lines applicable to the license. Courses in excess of four (4) ethics credits shall not carry forward nor will they apply to the total hours required. However, excess ethic credits may be applied retroactively in order to bring a lapsed license into compliance. Ethics shall include, but not be limited to, the study of fiduciary responsibility, commingling of funds, payment and acceptance of commissions, unfair claims practices, policy replacement consideration, and conflicts of interest.

(5) **Small employer group, high risk pool, and recent health care legislation.** At least one of the continuing education credit hours of instruction completed by licensees in Health Insurance during each twenty-four month period must address the Oklahoma Small Employer Health Insurance Reform Act, the Oklahoma Health Insurance High Risk Pool Act, and any recent state or federal health care legislation. At least one additional hour of said continuing education credit hours of instruction must address long-term care.

(6) **Credits for instructors.** An instructor who is a licensee shall receive the same continuing education credit for presenting approved course materials as a licensee who attends an approved classroom instructional session.

(7) **Prerequisite for renewal or reinstatement.** Effective January 1, 1992 as a prerequisite for licensure renewal or upon reinstatement following a lapse of license, an agent must submit, on his or her renewal/reinstatement date, the appropriate forms as specified in this section which establish that the education requirements have been met for the previous year(s).

(e) **Approval of continuing education providers.**

(1) **Information required, fee.** Each provider shall apply for approval from the Commissioner. Each provider, with the exception of public funded educational institutions, shall submit after its approval a fee of Two Hundred Dollars ($200.00), and all providers, including public funded educational institutions shall provide:

(A) Name and address of the provider;

(B) Contact person and his or her address and telephone number;

(C) The location of the courses or programs, if known, unless it is an individual study or correspondence course;

(D) The number of CEC hours requested for each course;

(E) Topic outlines which list the summarized topics covered in each course and a copy of any course materials. If a prior approved course has substantially changed, a summarization of those changes;

(F) The names and qualification of instructors. An instructor shall have one of the following qualifications:

(i) Three (3) years of recent experience in the subject area being taught; or

(ii) A degree related to the subject area being taught; or

(iii) Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college and/or vocational technical school credit hours in the subject area being taught.

(2) **Renewal fee.** An annual renewal fee of Two Hundred Dollars ($200.00) shall be payable on or before the approval anniversary date of each year by each provider to renew the approval of the provider. A fee of double the annual renewal fee shall be paid if the application for renewal is late, or incomplete on the approval anniversary date.

(3) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval of any provider for violation of or non-compliance with any provision of this section.

(f) **Courses; approval; records.**

(1) **Apply for approval 30 days prior to course.** At least thirty (30) days prior to the use of any course and not less than ten (10) days prior to the Continuing Education Advisory Committee meeting immediately preceding the course date, the provider shall apply to the Commissioner for course approval. The Commissioner shall grant or deny approval based upon information submitted in this section regarding each course or additional information regarding the course, if necessary. The Commissioner will assign the number of CEC hours awarded for an approved course and the line or lines of insurance for which the course qualifies.

(2) **Written approval required.** All courses shall require written approval <u>by the Commissioner. Courses shall be deemed to have been approved by the Commissioner if the courses are provided by national professional associations or local affiliates of national professional associations approved by the Commissioner to act as providers of continuing education.</u>

(3) **Withheld or withdrawn approval.** The Commissioner may withhold or withdraw approval for any course approval. This withdrawal will not affect any CEC hours attained under the course previous to the withdrawal.

(4) **Minimum of one credit hour.** Courses submitted for approval must consist of a minimum of one credit hour of course instruction.

(5) **Continuing education course must be separate from meetings.** Courses conducted in conjunction with other meetings must have a separate continuing education course component.

(6) **Content of courses.** Courses must be of a meaningful nature and shall not include items such as prospecting, motivation, sales techniques, psychology, recruiting, and subjects not relating to the insurance license. However, agency management courses designed to assist agents in becoming more efficient, profitable, and assuring their perpetuation, will be deemed to be in the best interest of the insuring public and thereby subject to approval. Each such agency management course must include the description, the effects the course is designed to accomplish toward the purposes of efficiency, profitability, and/or perpetuation and each course will be reviewed for approval on its own merits.

(7) **Certificate of Course Completion.** At the completion of each course, the provider shall provide the insurance agent a "Certificate of Course Completion" Form.

(8) **List of agents completing course to Commissioner; Agent license numbers.** Within ten (10) business days after completion of each course, the provider shall provide the Commissioner a list of all insurance agents who completed the course on the Provider Continuing Education Reporting Form. This list shall contain the course number, date of completion and license numbers of all insurance agents completing the course. If the list is not reported within ten (10) business days, a late report fee of $50.00 shall be paid to the Insurance Department. Failure to pay the late report fee may result in revocation of provider approval. Continued late filing may also result in loss of approval.

(9) **Course records maintained four years.** Providers shall maintain course records for at least four (4) years. The Commissioner may order an examination of a provider, at the provider's expense, for good cause shown.

(10) **Repeated approved course.** At least fourteen (14) days prior to repetition of an approved course, the Commissioner shall be notified in writing of the repetition, providing course number, name, date and instructor's name.

(g) **Correspondence and video courses.**

(1) **Correspondence courses.** An insurance agent who satisfactorily completes an approved course by correspondence and provides proof of satisfactory completion as specified by the Commissioner will receive credit for the number of hours assigned by the Commissioner for completion of the course.

(2) **Video courses.** In order for an insurance agent to receive credit for viewing an approved course presented by video cassette, the insurance agent must view the video cassette under the supervision of an approved instructor and swear by affidavit that (s)he has viewed the video cassette in its entirety. The affidavit must be submitted to the provider.

(h) **Repeating courses.** An insurance agent may repeat a course within the twenty-four month period if the maximum credits designated for the course were not attained in the first attempt. By repeating the course, the agent may not during the twenty-four month period earn more than the maximum credits designated for the course. An agent may repeat a course after two years have elapsed and receive the maximum credits designated for the course. This section shall not apply to ethics courses.

(i) **Extension of time.** For good cause shown, the Commissioner may grant an extension of time during which the requirements imposed by the act may be completed. The extension shall not exceed twelve (12) months. The extension will not alter the requirements or due date of the succeeding twenty-four-month period. "Good cause" includes disability, natural disaster, or other extenuating circumstances. Each request for extension of time shall be in writing from the licensee and shall include details and any documentation to support the request. Each request must be received by the Commissioner no less than thirty (30) days before the expiration of the twenty-four month period.

(j) **Continuing education advisory committee.**

(1) There shall hereby be established the Continuing Education Advisory Committee. This committee shall consist of one (1) representative of a licensed life insurance company, one (1) representative of a licensed property and casualty insurance company, one (1) representative of the Professional Independent Insurance Agents of Oklahoma, one (1) representative of the Life Underwriter Training Council, one (1) representative of the Health Underwriters, one (1) licensed non-affiliated life agent, one (1) licensed non-affiliated property and casualty agent and two (2) individuals designated by the Insurance Commissioner. These committee members shall be appointed by the Commissioner and the term of each member shall be three (3) years; except that of the members first appointed, three shall serve for one (1) year, three shall serve for two (2) years, and two shall serve for three (3) years. Any member may be reappointed for successive terms. The committee shall meet monthly. The members of the committee shall serve without pay and shall not be reimbursed for any expenses.

(2) Prior to the Commissioner's approval or disapproval of a course in 365:25-3-1(f), the Continuing Education Advisory Committee will review the course submitted and make its nonbinding recommendation to the Commissioner on granting or denying approval based upon information submitted in 365:25-3-1(e) regarding the course or additional information regarding the course, if necessary, the number of CEC hours awarded for an approved course and the line or lines of insurance for which the course qualifies. Each course approval shall be valid for a period of five (5) years, unless the course has a material change. Material changes to courses require course resubmission for overall course review and approval. Course approval following the review of material changes

shall reset the five year validity period. At the expiration of the five year period, providers shall submit the course for approval by the Board if the provider wants to continue to offer the course for continuing education credit. This subsection shall apply to all existing approved continuing education courses at the time this rule becomes effective, with previously approved courses having an expiration date of five years from the date of prior approval, unless the course has a material change, as previously detailed.

(k) **Severability provision.** If any provision of this section, or application of such provision to any person or circumstances, shall be held invalid, the remainder of the section, and the application of such provision to person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SUBCHAPTER 5. BAIL BONDSMEN

PART 5. GENERAL PROVISIONS PERTAINING TO BAIL BONDSMEN

365:25-5-41. Special deposit

(a) In addition to the cash or securities deposited in trust with the State Treasurer through the Insurance Commissioner's office pursuant to 36 O.S. § 613, insurers ~~surety companies~~ writing bail bonds in this state shall deposit in trust additional cash or securities equaling at least a twenty-to-one (20:1) ~~ten-to-one (10:1)~~ ratio of outstanding liability-to-deposit. ~~Outstanding liability shall be determined by the monthly bail bond reports filed by the company with the Insurance Department pursuant to 59 O.S. § 1314 and Section 365:25-5-36.~~

(b) An insurer shall comply with the following requirements to maintain the special deposit described in subsection (a):

(1) the insurer's monthly report of outstanding liability shall be within ten percent (10%) of the outstanding liability reported by all the insurer's appointed surety bondsmen for that month.

(2) all bail bond forfeitures shall either be paid within 91 days after receipt of the Order and Judgment of Forfeiture or vacated by the court within 91 days from the date of receipt of the Order and Judgment of Forfeiture.

(c) If the insurer fails to comply with either requirement of paragraph (b) more than three (3) times in a consecutive twelve (12) month period, the insurer's special deposit shall equal at least a ten-to-one (10:1) ratio of outstanding liability-to-deposit. The Insurance Commissioner shall provide written notification of this requirement via certified mail, return receipt requested, to the insurer's address of record. The special deposit required by this paragraph shall become effective thirty (30) days from the date notification is received.

(d) If an insurer is authorized to write only bail bonds, the cash or securities deposited in trust with the State Treasurer though the Insurance Commissioner's office pursuant to 36 O.S. § 613 shall apply towards the special deposit required by this section.

[OAR Docket #06-1101; filed 5-26-06]

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

[OAR Docket #06-1102]

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PERMANENT final adoption

RULES:
Subchapter 17. Consumer Protection In Annuity Transactions Regulation [NEW]
365:25-17-1. Purpose [NEW]
365:25-17-2. Scope [NEW]
365:25-17-3. Authority [NEW]
365:25-17-4. Exemptions [NEW]
365:25-17-5. Definitions [NEW]
365:25-17-6. Misrepresentation, fraud and incomplete comparisons of annuities [NEW]
365:25-17-7. Duties of insurers and of insurance producers [NEW]
365:25-17-8. Mitigation of responsibility [NEW]
365:25-17-9. Recordkeeping [NEW]
Subchapter 19. Annuity Disclosure Regulation [NEW]
365:25-19-1. Purpose [NEW]
365:25-19-2. Authority [NEW]
365:25-19-3. Applicability and scope [NEW]
365:25-19-4. Definitions [NEW]
365:25-19-5. Standards for the disclosure document and buyer's guide [NEW]
365:25-19-6. Report to contract owners [NEW]
365:25-19-7. Penalties [NEW]
365:25-19-8 Separability [NEW]
365:25-19-9. Effective date [NEW]
Appendix S. Buyer's Guide [NEW]

AUTHORITY:
Insurance Commissioner, 36 O.S. §§ 307.1 and 1201, et seq.

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Superseded rules:
Subchapter 17. Senior Protection In Annuity Transactions Regulation [NEW]
365:25-17-1. Purpose [NEW]
365:25-17-2. Scope [NEW]
365:25-17-3. Authority [NEW]
365:25-17-4. Exemptions [NEW]
365:25-17-5. Definitions [NEW]
365:25-17-6. Misrepresentation, fraud and incomplete comparisons of annuities [NEW]
365:25-17-7. Duties of insurers and of insurance producers [NEW]
365:25-17-8. Mitigation of responsibility [NEW]
365:25-17-9. Recordkeeping [NEW]
365:25-17-10. Advertisements [NEW]
365:25-17-11. Visit in senior's home [NEW]
Gubernational approval:
May 4, 2005
Register publication:
22 Ok Reg 1429
Docket number:
05-827
INCORPORATION BY REFERENCE:
n/a
ANALYSIS:
The proposed Consumer Protection In Annuity Transactions Regulation sets forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed. This regulation is currently effective as emergency rules covering persons age 65 or over.
The purpose of the proposed Annuity Disclosure Regulation is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. The regulation specifies the minimum information that must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this regulation is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.
CONTACT PERSON:
Karl F. Kramer, First Assistant General Counsel, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2006.

SUBCHAPTER 17. CONSUMER PROTECTION IN ANNUITY TRANSACTIONS REGULATION

365:25-17-1. Purpose

(a) The purpose of this regulation is to set forth standards and procedures for recommendations to consumers that result in a transaction involving annuity products so that the insurance needs and financial objectives of consumers at the time of the transaction are appropriately addressed.
(b) Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation.

365:25-17-2. Scope

This regulation shall apply to any recommendation to purchase or exchange an annuity made to a consumer by an insurance producer, or an insurer where no producer is involved, that results in the purchase or exchange recommended.

365:25-17-3. Authority

This regulation is issued under the authority of the Unfair Trade Practices Act, 36 O.S. § 1201, et seq.

365:25-17-4. Exemptions

Unless otherwise specifically included, this regulation shall not apply to recommendations involving:
(1) Direct response solicitations where there is no recommendation based on information collected from the consumer pursuant to this regulation; or
(2) Contracts used to fund:
(A) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
(B) A plan described by Sections 401(a), 401(k), 403(b), 408(k) or 408(p) of the Internal Revenue Code (IRC), as amended, if established or maintained by an employer;
(C) A government or church plan defined in Section 414 of the IRC, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under Section 457 of the IRC;
(D) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
(E) Settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
(F) Formal prepaid funeral contracts.

365:25-17-5. Definitions

The following words and terms, when used in this Subchapter, shall have the following meanings, unless the context clearly indicates otherwise.
"Annuity" means a fixed annuity or variable annuity that is individually solicited, whether the product is classified as an individual or group annuity.
"Insurer" means a company required to be licensed under the laws of this state to provide insurance products, including annuities.
"Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance, including annuities.
"Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase or exchange of an annuity in accordance with that advice.

365:25-17-6. Misrepresentation, fraud and incomplete comparisons of annuities

Insurers and insurance producers shall not make or issue or cause to be made or issued any recommendation or statement misrepresenting or fraudulently or unfairly making incomplete comparisons regarding the terms or conditions of any annuity contract for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract

or allow it to lapse for the purpose of replacing such contract in any way whatsoever.

365:25-17-7. Duties of insurers and of insurance producers

(a) **Suitability required.** In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.

(b) **Producer required to obtain information from consumer.** Prior to the execution of a purchase or exchange of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain information concerning:

(1) The consumer's financial status;

(2) The consumer's tax status;

(3) The consumer's investment objectives; and

(4) Such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.

(c) **Obligation to consumer.**

(1) Except as provided under Paragraph (2) of this subsection, neither an insurance producer, nor an insurer where no producer is involved, shall have any obligation to a consumer under Subsection A related to any recommendation if a consumer:

(A) Refuses to provide relevant information requested by the insurer or insurance producer;

(B) Decides to enter into an insurance transaction that is not based on a recommendation of the insurer or insurance producer; or

(C) Fails to provide complete or accurate information.

(2) An insurer or insurance producer's recommendation subject to Paragraph (1) shall be reasonable under all the circumstances actually known to the insurer or insurance producer at the time of the recommendation.

(d) **System to supervise recommendations of insurance producers.**

(1) An insurer either shall assure that a system to supervise recommendations that is reasonably designed to achieve compliance with this regulation is established and maintained by complying with Paragraphs (3) to (5) of this subsection, or shall establish and maintain such a system, including, but not limited to:

(A) Maintaining written procedures; and

(B) Conducting periodic reviews of its records that are reasonably designed to assist in detecting and preventing violations of this regulation.

(2) A general agent and independent agency either shall adopt a system established by an insurer to supervise recommendations of its insurance producers that is reasonably designed to achieve compliance with this regulation, or shall establish and maintain such a system, including, but not limited to:

(A) Maintaining written procedures; and

(B) Conducting periodic reviews of records that are reasonably designed to assist in detecting and preventing violations of this regulation.

(3) An insurer may contract with a third party, including a general agent or independent agency, to establish and maintain a system of supervision as required by Paragraph (1) with respect to insurance producers under contract with or employed by the third party.

(4) An insurer shall make reasonable inquiry to assure that the third party contracting under Paragraph (3) of this subsection is performing the functions required under Paragraph (1) of this subsection and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by doing all of the following:

(A) The insurer annually obtains a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions; and

(B) The insurer, based on reasonable selection criteria, periodically selects third parties contracting under Paragraph (3) of this subsection for a review to determine whether the third parties are performing the required functions. The insurer shall perform those procedures to conduct the review that are reasonable under the circumstances.

(5) An insurer that contracts with a third party pursuant to Paragraph (3) of this subsection and that complies with the requirements to supervise in Paragraph (4) of this subsection shall have fulfilled its responsibilities under Paragraph (1) of this subsection.

(6) An insurer, general agent or independent agency is not required by Paragraph (1) or (2) of this subsection to:

(A) Review, or provide for review of, all insurance producer solicited transactions; or

(B) Include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer, general agent or independent agency.

(7) A general agent or independent agency contracting with an insurer pursuant to Paragraph (3) of this subsection shall promptly, when requested by the insurer pursuant to Paragraph (4) of this subsection, give a certification as described in Paragraph (4) of this subsection or give a clear statement that it is unable to meet the certification criteria.

(8) No person may provide a certification under Paragraph (4)(A) of this subsection unless:

(A) The person is a senior manager with responsibility for the delegated functions; and

(B) The person has a reasonable basis for making the certification.

(e) **NASD and suitability of variable annuities.** Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the Insurance Commissioner's ability to enforce the provisions of this regulation.

365:25-17-8. Mitigation of responsibility

(a) The Insurance Commissioner may order:

(1) An insurer to take reasonably appropriate corrective action for any senior consumer harmed by the insurer's, or by its insurance producer's, violation of this regulation;

(2) An insurance producer to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this regulation; and

(3) A general agency or independent agency that employs or contracts with an insurance producer to sell, or solicit the sale, of annuities to consumers, to take reasonably appropriate corrective action for any senior consumer harmed by the insurance producer's violation of this regulation.

(b) Any applicable penalty under Sections 619 and 1435.13 of Title 36 of the Oklahoma Statutes for a violation of Section 365:25-17-7(a), (b), or (c)(2) of this regulation may be reduced or eliminated at the discretion of the Insurance Commissioner if corrective action for the senior consumer was taken promptly after a violation was discovered.

365:25-17-9. Recordkeeping

(a) Insurers, general agents, independent agencies and insurance producers shall maintain or be able to make available to the commissioner records of the information collected from the consumer and other information used in making the recommendations that were the basis for insurance transactions for five (5) years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance producer.

(b) Records required to be maintained by this regulation may be maintained in paper, photographic, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

SUBCHAPTER 19. ANNUITY DISCLOSURE REGULATION

365:25-19-1. Purpose

The purpose of this regulation is to provide standards for the disclosure of certain minimum information about annuity contracts to protect consumers and foster consumer education. The regulation specifies the minimum information which must be disclosed and the method for disclosing it in connection with the sale of annuity contracts. The goal of this regulation is to ensure that purchasers of annuity contracts understand certain basic features of annuity contracts.

365:25-19-2. Authority

This regulation is issued based upon the authority granted the Insurance Commissioner under Section 1204 of the Oklahoma Unfair Trade Practices Act, 36 O.S. § 1204.

365:25-19-3. Applicability and scope

This regulation applies to all group and individual annuity contracts and certificates except:

(1). **Registered or non-registered variable annuities.** Registered or non-registered variable annuities or other registered products;

(2) **Immediate and deferred annuities.** Immediate and deferred annuities that contain no nonguaranteed elements;

(3) **Annuities used to fund plans or arrangments**

(A) Annuities used to fund:

(i) An employee pension plan which is covered by the Employee Retirement Income Security Act (ERISA);

(ii) A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer,

(iii) A governmental or church plan defined in Section 414 or a deferred compensation plan of a state or local government or a tax exempt organization under Section 457 of the Internal Revenue Code; or

(iv) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor.

(B) Notwithstanding Paragraph (A), the regulation shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions an employee elects to make whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two (2) or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract. As used in this subsection, direct solicitation shall not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;

(4) **Structured settlement annuities.** Structured settlement annuities;

(5) **Charitable gift annuities.** Charitable gift annuities;

(6) **Funding agreements.** Funding agreements.

365:25-19-4. Definitions

For the purposes of this regulation:

"Charitable gift annuity" means a transfer of cash or other property by a donor to a charitable organization in return for an annuity payable over one or two lives, under which the actuarial value of the annuity is less than the value of the cash or other property transferred and the difference in value

constitutes a charitable deduction for federal tax purposes, but does not include a charitable remainder trust or a charitable lead trust or other similar arrangement where the charitable organization does not issue an annuity and incur a financial obligation to guarantee annuity payments;

"Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

"Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

"Funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

"Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity."

"Guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

"Non-guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying nonguaranteed elements are used in its calculation.

"Structured settlement annuity" means a "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code or an annuity that would be a qualified funding asset under section 130(d) but for the fact that it is not owned by an assignee under a qualified assignment.

365:25-19-5. Standards for the disclosure document and buyer's guide

(a) **Disclosure document and buyer's guide.**

(1) Where the application for an annuity contract is taken in a face-to-face meeting, the applicant shall at or before the time of application be given both the disclosure document described in Subsection (b) and the Buyer's Guide contained in Appendix S of this Chapter.

(2) Where the application for an annuity contract is taken by means other than in a face-to-face meeting, the applicant shall be sent both the disclosure document and the Buyer's Guide no later than five (5) business days after the completed application is received by the insurer.

(A) With respect to an application received as a result of a direct solicitation through the mail:

(i) Providing a Buyer's Guide in a mailing inviting prospective applicants to apply for an annuity contract shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business days after receipt of the application.

(ii) Providing a disclosure document in a mailing inviting a prospective applicant to apply for an annuity contract shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

(B) With respect to an application received via the Internet:

(i) Taking reasonable steps to make the Buyer's Guide available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the Buyer's Guide be provided no later than five (5) business day of receipt of the application.

(ii) Taking reasonable steps to make the disclosure document available for viewing and printing on the insurer's website shall be deemed to satisfy the requirement that the disclosure document be provided no later than five (5) business days after receipt of the application.

(C) A solicitation for an annuity contract provided in other than a face-to face meeting shall include a statement that the proposed applicant may contact the insurance department of the state for a free annuity Buyer's Guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free annuity Buyer's Guide.

(3) Where the Buyer's Guide and disclosure document are not provided at or before the time of application, a free look period of no less than fifteen (15) days shall be provided for the applicant to return the annuity contract without penalty. This free look shall run concurrently with any other free look provided under state law or regulation.

(b) **Minimum information included in disclosure document.** At a minimum, the following information shall be included in the disclosure document required to be provided under this regulation:

(1) The generic name of the contract, the company product name, if different, and form number, and the fact that it is an annuity;

(2) The insurer's name and address;

(3) A description of the contract and its benefits, emphasizing its long-term nature, including examples where appropriate:

(A) The guaranteed, non-guaranteed and determinable elements of the contract, and their

limitations, if any, and an explanation of how they operate;

(B) An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate and the fact that rates may change from time to time and are not guaranteed;

(C) Periodic income options both on a guaranteed and non-guaranteed basis;

(D) Any value reductions caused by withdrawals from or surrender of the contract;

(E) How values in the contract can be accessed;

(F) The death benefit, if available and how it will be calculated;

(G) A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract; and

(H) Impact of any rider, such as a long-term care rider.

(4) Specific dollar amount or percentage charges and fees shall be listed with an explanation of how they apply.

(5) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

(c) **Understanding by a typical person.** Insurers shall define terms used in the disclosure statement in language that facilitates the understanding by a typical person within the segment of the public to which the disclosure statement is directed.

365:25-19-6. Report to Contract Owners

For annuities in the payout period with changes in non-guaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract that contains at least the following information:

(1) The beginning and end date of the current report period;

(2) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;

(3) The total amounts, if any, that have been credited, charged to the contract value or paid during the current report period; and

(4) The amount of outstanding loans, if any, as of the end of the current report period.

365:25-19-7. Penalties

In addition to any other penalties provided by the laws of this state, an insurer or producer that violates a requirement of this regulation shall be guilty of a violation of the Oklahoma Unfair Trade Practices Act, 36 O.S. § 1201, et seq.

365:25-19-8. Separability

If any provision of this regulation or its application to any person or circumstance is for any reason held to be invalid by any court of law, the remainder of the regulation and its application to other persons or circumstances shall not be affected.

365:25-19-9. Effective Date

This regulation shall become effective January 1, 2007, and shall apply to contracts sold on or after the effective date.

APPENDIX S. BUYER'S GUIDE [NEW]

[The face page of the Fixed Deferred Annuity Buyer's Guide shall read as follows:]

Prepared by the National Association of Insurance Commissioners

The National Association of Insurance Commissioners is an association of state insurance regulatory officials. This association helps the various insurance departments to coordinate insurance laws for the benefit of all consumers.

This guide does not endorse any company or policy.

Reprinted by. . .

It is important that you understand the differences among various annuities so you can choose the kind that best fits your needs. This guide focuses on *fixed deferred* annuity contracts. There is, however, a brief description of variable annuities. If you're thinking of buying an equity-indexed annuity, an appendix to this guide will give you specific information. This Guide isn't meant to offer legal, financial or tax advice. You may want to consult independent advisors. At the end of this Guide are questions you should ask your agent or the company. Make sure you're satisfied with the answers before you buy.

WHAT IS AN ANNUITY?

An annuity is a contract in which an insurance company makes a series of income payments at regular intervals in return for a premium or premiums you have paid. Annuities are most often bought for future retirement income. Only an annuity can pay an income that can be guaranteed to last as long as you live.

An annuity is neither a life insurance nor a health insurance policy. It's not a savings account or a savings certificate. You shouldn't buy an annuity to reach short-term financial goals.

Your value in an annuity contract is the premiums you've paid, less any applicable charges, plus interest credited. The insurance company uses the value to figure the amount of most of the benefits that you can choose to receive from an annuity contract. This guide explains how interest is credited as well as some typical charges and benefits of annuity contracts.

A *deferred* annuity has two parts or *periods.* During the *accumulation period*, the money you put into the annuity, less any applicable charges, earns interest. The earnings grow tax-deferred as long as you leave them in the annuity. During the second period, called the *payout period*, the company pays income to you or to someone you choose.

WHAT ARE THE DIFFERENT KINDS OF ANNUITIES?

This guide explains major differences in different kinds of annuities to help you understand how each might meet your needs. But look at the specific terms of an individual contract you're considering and the disclosure document you receive. If your annuity is being used to fund or provide benefits under a pension plan, the benefits you get will depend on the terms of the plan. Contact your pension plan administrator for information.

This Buyer's Guide will focus on individual fixed deferred annuities.

Single Premium or Multiple Premium

You pay the insurance company only one payment for a *single premium* annuity. You make a series of payments for a *multiple premium* annuity. There are two kinds of multiple premium annuities. One kind is a *flexible premium* contract. Within set limits, you pay as much premium as you want, whenever you want. In the other kind, a *scheduled premium* annuity, the contract spells out your payments and how often you'll make them.

Immediate or Deferred

With an *immediate* annuity, income payments start no later than one year after you pay the premium. You usually pay for an immediate annuity with one payment.

The income payments from a *deferred* annuity often start many years later. Deferred annuities have an accumulation period, which is the time between when you start paying premiums and when income payments start.

Fixed or Variable

• Fixed

During the accumulation period of a *fixed deferred* annuity, your money (less any applicable charges) earns interest at rates set by the insurance company or in a way spelled out in the annuity contract. The company guarantees that it will pay no less than a minimum rate of interest. During the payout period, the amount of each income payment to you is generally set when the payments start and will not change.

• Variable

During the accumulation period of a *variable* annuity, the insurance company puts your premiums (less any applicable charges) into a separate account. You decide how the company will invest those premiums, depending on how much risk you want to take. You may put your premium into a stock, bond or other account, with no guarantees, or into a fixed account, with a minimum guaranteed interest. During the payout period of a variable annuity, the amount of each income payment to you may be fixed (set at the beginning) or variable (changing with the value of the investments in the separate account).

HOW ARE THE INTEREST RATES SET FOR MY FIXED DEFERRED ANNUITY?

During the accumulation period, your money (less any applicable charges) earns interest at rates that change from time to time**. Usually, what these rates will be is entirely up to the insurance company.**

Current Interest Rate

The current rate is the rate the company decides to credit to your contract at a particular time. The company will guarantee it will not change for some time period.

• The *initial rate* is an interest rate the insurance company may credit for a set period of time after you first buy your annuity. The initial rate in some contracts may be higher than it will be later. This is often called a bonus rate.

• The *renewal rate* is the rate credited by the company after the end of the set time period. The contract tells how the company will set the renewal rate, which may be tied to an external reference or index.

Minimum Guaranteed Rate

The *minimum guaranteed interest rate* is the lowest rate your annuity will earn. This rate is stated in the contract.

Multiple Interest Rates

Some annuity contracts apply different interest rates to each premium you pay or to premiums you pay during different time periods.

Other annuity contracts may have two or more accumulated values that fund different benefit options. These accumulated values may use different interest rates. **You get only one of the accumulated values depending on which benefit you choose.**

WHAT CHARGES MAY BE SUBTRACTED FROM MY FIXED DEFERRED ANNUITY?

Most annuities have charges related to the cost of selling or servicing it. These charges may be subtracted directly from the contract value. Ask your agent or the company to describe the charges that apply to your annuity. Some examples of charges, fees and taxes are:

Surrender or Withdrawal Charges

If you need access to your money, you may be able to take all or part of the value out of your annuity at any time during the accumulation period. If you take out part of the value, you may pay a *withdrawal* charge. If you take out all of the value and surrender, or terminate, the annuity, you may pay a *surrender* charge. In either case, the company may figure the charge as a percentage of the value of the contract, of the premiums you've paid or of the amount you're withdrawing. The company may reduce or even eliminate the surrender charge after you've had the contract for a stated number of years. A company may waive the surrender charge when it pays a death benefit.

Some annuities have stated terms. When the term is up, the contract may automatically expire or renew. You're usually given a short period of time, called a *window*, to decide if you want to renew or surrender the annuity. If you surrender during the window, you won't have to pay surrender charges. If you renew, the surrender or withdrawal charges may start over.

In some annuities, there is no charge if you surrender your contract when the company's current interest rate falls below a certain level. This may be called a *bail-out* option.

In a multiple-premium annuity, the surrender charge may apply to each premium paid for a certain period of time. This may be called a *rolling* surrender or withdrawal charge.

Some annuity contracts have a *market value adjustment* feature. If interest rates are different when you surrender your annuity than when you bought it, a market value adjustment may make the cash surrender value higher or lower. Since you and the insurance company share this risk, an annuity with a MVA feature may credit a higher rate than an annuity without that feature.

Be sure to read the Tax Treatment section and ask your tax advisor for information about possible tax penalties on withdrawals.

Free Withdrawal

Your annuity may have a limited *free withdrawal* feature. That lets you make one or more withdrawals without a charge. The size of the free withdrawal is often limited to a set percentage of your contract value. If you make a larger withdrawal, you may pay withdrawal charges. You may lose any interest above the minimum guaranteed rate on the amount withdrawn. Some annuities waive withdrawal charges in certain situations, such as death, confinement in a nursing home or terminal illness.

Contract Fee

A contract fee is a flat dollar amount charged either once or annually.

Transaction Fee

A transaction fee is a charge per premium payment or other transaction.

Percentage of Premium Charge

A percentage of premium charge is a charge deducted from each premium paid. The percentage may be lower after the contract has been in force for a certain number of years or after total premiums paid have reached a certain amount.

Premium Tax

Some states charge a tax on annuities. The insurance company pays this tax to the state. The company may subtract the amount of the tax when you pay your premium, when you withdraw your contract value, when you start to receive income payments or when it pays a death benefit to your beneficiary.

WHAT ARE SOME FIXED DEFERRED ANNUITY CONTRACT BENEFITS?

Annuity Income Payments

One of the most important benefits of deferred annuities is your ability to use the value built up during the accumulation period to give you a lump sum payment or to make income payments during the payout period. Income payments are usually made monthly but you may choose to receive them less often. The size of income payments is based on the accumulated value in your annuity and the annuity's *benefit rate* in effect when income payments start. The benefit rate usually depends on your age and sex, and the annuity payment option you choose. For example, you might choose payments that continue as long as you live, as long as your spouse lives or for a set number of years.

There is a table of guaranteed benefit rates in each annuity contract. Most companies have *current* benefit rates as well. The company can change the current rates at any time, but the current rates can never be less than the guaranteed benefit rates. When income payments start, the insurance company generally uses the benefit rate in effect at that time to figure the amount of your income payment.

Companies may offer various income payment options. You (the owner) or another person that you name may choose the option. The options are described here as if the payments are made to you.

• Life Only - The company pays income for your lifetime. It doesn't make any payments to anyone after you die. This payment option usually pays the highest income possible. You might choose it if you have no dependents, if you have taken care of them through other means or if the dependents have enough income of their own.

• Life Annuity with Period Certain - The company pays income for as long as you live and guarantees to make payments for a set number of years even if you die. This *period certain* is usually 10 or 20 years. If you live longer than the period certain, you'll continue to receive payments until you die. If you die during the period certain, your beneficiary gets regular payments for the rest of that period. If you die after the period certain, your beneficiary doesn't receive any payments from your annuity.
Because the "period certain" is an added benefit, each income payment will be smaller than in a lifeonly option.

• Joint and Survivor - The company pays income as long as either you or your beneficiary lives. You may choose to decrease the amount of the payments after the first death. You may also be able to choose to have payments continue for a set length of time. Because the *survivor* feature is an added benefit, each income payment is smaller than in a life-only option.

Death Benefit

In some annuity contracts, the company may pay a death benefit to your beneficiary if you die before the income payments start. The most common death benefit is the contract value or the premiums paid, whichever is more.

CAN MY ANNUITY'S VALUE BE DIFFERENT DEPENDING ON MY CHOICE OF BENEFIT?

While all deferred annuities offer a choice of benefits, some use different accumulated values to pay different benefits. For example, an annuity may use one value if annuity payments are for retirement benefits and a different value if the annuity is surrendered. As another example, an annuity may use one value for long-term care benefits and a different value if the annuity is surrendered. You can't receive more than one benefit at the same time.

WHAT ABOUT THE TAX TREATMENT OF ANNUITIES?

Below is a general discussion about taxes and annuities. You should consult a professional tax advisor to discuss your individual tax situation.

Under current federal law, annuities receive special tax treatment. Income tax on annuities is deferred, which means you aren't taxed on the interest your money earns while it stays in the annuity. Tax-deferred accumulation isn't the same as tax-free accumulation. An advantage of tax deferral is that the tax bracket you're in when you receive annuity income payments may be lower than the one you're in during the accumulation period. You'll also be earning interest on the amount you would have paid in taxes during the accumulation period. Most states' tax laws on annuities follow the federal law.

Part of the payments you receive from an annuity will be considered as a return of the premium you've paid. You won't have to pay taxes on that part. Another part of the payments is considered interest you've earned. You must pay taxes on the part that is considered interest when you withdraw the money. You may also have to pay a 10% tax penalty if you withdraw the accumulation before age 59 1/2. The Internal Revenue Code also has rules about distributions after the death of a contract holder.

Annuities used to fund certain employee pension benefit plans (those under Internal Revenue Code Sections 401(a), 401(k), 403(b), 457 or 414) defer taxes on plan contributions as well as on interest or investment income. Within the limits set by the law, you can use pretax dollars to make payments to the annuity. When you take money out, it will be taxed.

You can also use annuities to fund traditional and Roth IRAs under Internal Revenue Code Section 408. If you buy an annuity to fund an IRA, you'll receive a disclosure statement describing the tax treatment.

WHAT IS A "FREE LOOK" PROVISION?

Many states have laws which give you a set number of days to look at the annuity contract after you buy it. If you decide during that time that you don't want the annuity, you can return the contract and get all your money back. This is often referred to as a *free look* or *right to return* period. The free look period should be prominently stated in your contract. Be sure to read your contract carefully during the free look period.

HOW DO I KNOW IF A FIXED DEFERRED ANNUITY IS RIGHT FOR ME?

The questions listed below may help you decide which type of annuity, if any, meets your retirement planning and financial needs. You should think about what your goals are for the money you may put into the annuity. You need to think about how much risk you're willing to take with the money. Ask yourself:

- How much retirement income will I need in addition to what I will get from Social Security and my pension?
- Will I need that additional income only for myself or for myself and someone else?
- How long can I leave my money in the annuity?
- When will I need income payments?
- Does the annuity let me get money when I need it?
- Do I want a fixed annuity with a guaranteed interest rate and little or no risk of losing the principal?
- Do I want a variable annuity with the potential for higher earnings that aren't guaranteed and the possibility that I may risk losing principal?
- Or, am I somewhere in between and willing to take some risks with an equity-indexed annuity?

WHAT QUESTIONS SHOULD I ASK MY AGENT OR THE COMPANY?

- Is this a single premium or multiple premium contract?
- Is this an equity-indexed annuity?
- What is the initial interest rate and how long is it guaranteed?
- Does the initial rate include a bonus rate and how much is the bonus?
- What is the guaranteed minimum interest rate?
- What renewal rate is the company crediting on annuity contracts of the same type that were issued last year?

- Are there withdrawal or surrender charges or penalties if I want to end my contract early and take out all of my money? How much are they?
- Can I get a partial withdrawal without paying surrender or other charges or losing interest?
- Does my annuity waive withdrawal charges for reasons such as death, confinement in a nursing home or terminal illness?
- Is there a market value adjustment (MVA) provision in my annuity?
- What other charges, if any, may be deducted from my premium or contract value?
- If I pick a shorter or longer payout period or surrender the annuity, will the accumulated value or the way interest is credited change?
- Is there a death benefit? How is it set? Can it change?
- What income payment options can I choose? Once I choose a payment option, can I change it?

FINAL POINTS TO CONSIDER

Before you decide to buy an annuity, you should review the contract. Terms and conditions of each annuity contract will vary.

Ask yourself if, depending on your needs or age, this annuity is right for you. Taking money out of an annuity may mean you must pay taxes. Also, while it's sometimes possible to transfer the value of an older annuity into a new annuity, the new annuity may have a new schedule of charges that could mean new expenses you must pay directly or indirectly.

You should understand the long-term nature of your purchase. Be sure you plan to keep an annuity long enough so that the charges don't take too much of the money you put in.

Be sure you understand the effect of all charges.

If you're buying an annuity to fund an IRA or other tax-deferred retirement program, be sure that you're eligible. Also, ask if there are any restrictions connected with the program.

Remember that the quality of service that you can expect from the company and the agent is a very important factor in your decision.

When you receive your annuity contract, **READ IT CAREFULLY!!** Ask the agent and company for an explanation of anything you don't understand. Do this *before* any free look period ends

.

Compare information for similar contracts from several companies. Comparing products may help you make a better decision.

If you have a specific question or can't get answers you need from the agent or company, contact your state insurance department.

EQUITY-INDEXED ANNUITIES

This appendix to the Buyer's Guide for Fixed Deferred Annuities will focus on equity-indexed annuities. Like other types of fixed deferred annuities, equity-indexed annuities provide for annuity income payments, death benefits and tax-deferred accumulation. You should read the Buyer's Guide for general information about those features and about provisions such as withdrawal and surrender charges.

WHAT ARE EQUITY-INDEXED ANNUITIES?

An equity-indexed annuity is a fixed annuity, either immediate or deferred, that earns interest or provides benefits that are linked to an external equity reference or an equity index. The value of the index might be tied to a stock or other equity index. One of the most commonly used indices is Standard & Poor's 500 Composite Stock Price Index (the S&P 500), which is an equity index. The value of any index varies from day to day and is not predictable. (**Note:** S&P 500 is a registered trademark of the McGraw-Hill Companies, Inc., used with permission.)

When you buy an equity-indexed annuity you own an insurance contract. You are not buying shares of any stock or index.

While immediate equity-indexed annuities may be available, this appendix will focus on deferred equity-indexed annuities.

HOW ARE THEY DIFFERENT FROM OTHER FIXED ANNUITIES?

An equity-indexed annuity is different from other fixed annuities because of the way it credits interest to your annuity's value. Some fixed annuities only credit interest calculated at a rate set in the contract. Other fixed annuities also credit interest at rates set from time to time by the insurance company. Equity-indexed annuities credit interest using a formula based on changes in the index to which the annuity is linked. The formula decides how the additional interest, if any, is calculated and credited. How much additional interest you get and when you get it depends on the features of your particular annuity.

Your equity-indexed annuity, like other fixed annuities, also promises to pay a minimum interest rate. The rate that will be applied will not be less than this minimum guaranteed rate even if the index-linked interest rate is lower. The value of your annuity also will not drop below a guaranteed minimum. For example, many single premium contracts guarantee the minimum value will never be less than 90 percent of the premium paid, plus at least 3% in annual interest (less any partial withdrawals). The guaranteed value is the minimum amount available during a term for withdrawals, as well as for some annuitizations (see "Annuity Income Payments") and death benefits. The insurance company will adjust the value of the annuity at the end of each term to reflect any index increases.

WHAT ARE SOME EQUITY-INDEXED ANNUITY CONTRACT FEATURES?

Two features that have the greatest effect on the amount of additional interest that may be credited to an equity-indexed annuity are the indexing method and the participation rate. It is important to understand the features and how they work together. The following describes some other equity-indexed annuity features that affect the index-linked formula.

Indexing Method

The indexing method means the approach used to measure the amount of change, if any, in the index. Some of the most common indexing methods, which are explained more fully later on, include annual reset (ratcheting), high-water mark and point-to-point.

Term

The index term is the period over which index-linked interest is calculated; the interest is credited to your annuity at the end of a term. Terms are generally from one to ten years, with six or seven years being most common. Some annuities offer single terms while others offer multiple, consecutive terms. If your annuity has multiple terms, there will usually be a window at the end of each term, typically 30 days, during which you may withdraw your money without penalty. For installment premium annuities, the payment of each premium may begin a new term for that premium.

Participation Rate

The participation rate decides how much of the increase in the index will be used to calculate index-linked interest. For example, if the calculated change in the index is 9% and the participation rate is 70%, the index-linked interest rate for your annuity will be 6.3% (9% x 70% = 6.3%). A company may set a different participation rate for newly issued annuities as often as each day. Therefore, the initial participation rate in your annuity will depend on when it is issued by the company. The company usually guarantees the participation rate for a specific period (from one year to the entire term). When that period is over, the company sets a new participation rate for the next period. Some annuities guarantee that the participation rate will never be set lower than a specified minimum or higher than a specified maximum.

Cap Rate or Cap

Some annuities may put an upper limit, or cap, on the index-linked interest rate. This is the maximum rate of interest the annuity will earn. In the example given above, if the contract has a 6% cap rate, 6%, and not 6.3%, would be credited. Not all annuities have a cap rate.

Floor on Equity Index-Linked Interest

The floor is the minimum index-linked interest rate you will earn. The most common floor is 0%. A 0% floor assures that even if the index decreases in value, the index-linked interest that you earn will be zero and not negative. As in the case of a cap, not all annuities have a stated floor on index-linked interest rates. But in all cases, your fixed annuity will have a minimum guaranteed value.

Averaging

In some annuities, the average of an index's value is used rather than the actual value of the index on a specified date. The index averaging may occur at the beginning, the end, or throughout the entire term of the annuity.

Interest Compounding

Some annuities pay simple interest during an index term. That means index-linked interest is added to your original premium amount but does not compound during the term. Others pay compound interest during a term, which means that index-linked interest that has already been credited also earns interest in the future. In either case, however, the interest earned in one term is usually compounded in the next.

Margin/Spread/Administrative Fee

In some annuities, the index-linked interest rate is computed by subtracting a specific percentage from any calculated change in the index. This percentage, sometimes referred to as the "margin," "spread," or "administrative fee," might be instead of, or in addition to, a participation rate. For example, if the calculated change in the index is 10%, your annuity might specify that 2.25% will be subtracted from the rate to determine the interest rate credited. In this example, the rate would be 7.75% (10% - 2.25% =7.75%). In this example, the company subtracts the percentage only if the change in the index produces a positive interest rate.

Vesting

Some annuities credit none of the index-linked interest or only part of it, if you take out all your money before the end of the term. The percentage that is vested, or credited, generally increases as the term comes closer to its end and is always 100% at the end of the term.

HOW DO THE COMMON INDEXING METHODS DIFFER?

Annual Reset

Index-linked interest, if any, is determined each year by comparing the index value at the end of the contract year with the index value at the start of the contract year. Interest is added to your annuity each year during the term.

High-Water Mark

The index-linked interest, if any, is decided by looking at the index value at various points during the term, usually the annual anniversaries of the date you bought the annuity. The interest is based on the difference between the highest index value and the index value at the start of the term. Interest is added to your annuity at the end of the term.

Low-Water Mark

The index-linked interest, if any, is determined by looking at the index value at various points during the term, usually the annual anniversaries of the date you bought the annuity. The interest is based on the difference between the index value at the end of the term and the lowest index value. Interest is added to your annuity at the end of the term.

Point-to-Point

The index-linked interest, if any, is based on the difference between the index value at the end of the term and the index value at the start of the term. Interest is added to your annuity at the end of the term.

WHAT ARE SOME OF THE FEATURES AND TRADE-OFFS OF DIFFERENT INDEXING METHODS?

Generally, equity-indexed annuities offer *preset* combinations of features. You may have to make tradeoffs to get features you want in an annuity. This means the annuity you chose may also have features you don't want.

Features	Trade-Offs
Annual Reset Since the interest earned is "locked in" annually and the index value is "reset" at the end of each year, future decreases in the index will not affect the interest you have already earned. Therefore, your annuity using the annual reset method may credit more interest than annuities using other methods when the index fluctuates up and down often during the term. This design is more likely than others to give you access to index-linked interest before the term ends.	Your annuity's participation rate may change each year and generally will be lower than that of other indexing methods. Also an annual reset design may use a cap or averaging to limit the total amount of interest you might earn each year.
High-Water Mark Since interest is calculated using the highest value of the index on a contract anniversary during the term, this design may credit higher interest than some other designs if the index reaches a high point early or in the middle of the term, then drops off at the end of the term.	Interest is not credited until the end of the term. In some annuities, if you surrender your annuity before the end of the term, you may not get index-linked interest for that term. In other annuities, you may receive index-linked interest, based on the highest anniversary value to date and the annuity's vesting schedule. Also, contracts with this design may have a lower participation rate than annuities using other designs or may use a cap to limit the total amount of interest you might earn.
Low-Water Mark Since interest is calculated using the lowest value of the index prior to the end of the term, this design may credit higher interest than some other designs if the index reaches a low point early or in the middle of the term and then rises at the end of the term.	Interest is not credited until the end of the term. With some annuities, if you surrender your annuity before the end of the term, you may not get index-linked interest for that term. In other annuities, you may receive index-linked interest based on a comparison of the lowest anniversary value to date with the index value at surrender and the annuity's vesting schedule. Also, contracts with this design may have a lower participation rate than annuities using other designs or may use a cap to limit the total amount of interest you might earn.
Point-to-Point Since interest cannot be calculated before the end of the term, use of this design may permit a higher participation rate than annuities using other designs.	Since interest is not credited until the end of the term, typically six or seven years, you may not be able to get the index-linked interest until the end of the term.

WHAT IS THE IMPACT OF SOME OTHER EQUITY-INDEXED ANNUITY PRODUCT FEATURES?

Cap on Interest Earned

While a cap limits the amount of interest you might earn each year, annuities with this feature may have other product features you want, such as annual interest crediting or the ability to take partial withdrawals. Also, annuities that have a cap may have a higher participation rate.

Averaging

Averaging at the beginning of a term protects you from buying your annuity at a high point, which would reduce the amount of interest you might earn. Averaging at the end of the term protects you against severe declines in the index and losing index-linked interest as a result. On the other hand, averaging may reduce the amount of index-linked interest you earn when the index rises either near the start or at the end of the term.

Participation Rate

The participation rate may vary greatly from one annuity to another and from time to time within a particular annuity. Therefore, it is important for you to know how your annuity's participation rate works with the indexing method. A high participation rate may be offset by other features, such as simple interest, averaging, or a point-to-point indexing method. On the other hand, an insurance company may offset a lower participation rate by also offering a feature such as an annual reset indexing method.

Interest Compounding

It is important for you to know whether your annuity pays compound or simple interest during a term. While you may earn less from an annuity that pays simple interest, it may have other features you want, such as a higher participation rate.

WHAT WILL IT COST ME TO TAKE MY MONEY OUT BEFORE THE END OF THE TERM?

In addition to the information discussed in this Buyer's Guide about surrender and withdrawal charges and free withdrawals, there are additional considerations for equity-indexed annuities. Some annuities credit none of the index-linked interest or only part of it if you take out money before the end of the term. The percentage that is vested, or credited, generally increases as the term comes closer to its end and is always 100% at the end of the term.

ARE DIVIDENDS INCLUDED IN THE INDEX?

Depending on the index used, stock dividends may or may not be included in the index's value. For example, the S&P 500 is a stock price index and only considers the prices of stocks. It does not recognize any dividends paid on those stocks.

HOW DO I KNOW IF AN EQUITY-INDEXED ANNUITY IS RIGHT FOR ME?

The questions listed below may help you decide which type of annuity, if any, meets your retirement planning and financial needs. You should consider what your goals are for the money you may put into the annuity. You need to think about how much risk you're willing to take with the money. Ask yourself:

Am I interested in a variable annuity with the potential for higher earnings that are not guaranteed and willing to risk losing the principal?

Is a guaranteed interest rate more important to me, with little or no risk of losing the principal?

Or, am I somewhere in between these two extremes and willing to take some risks?

HOW DO I KNOW WHICH EQUITY-INDEXED ANNUITY IS BEST FOR ME?

As with any other insurance product, you must carefully consider your own personal situation and how you feel about the choices available. No single annuity design may have all the features you want. It is important to understand the features and trade-offs available so you can choose the annuity that is right for you. Keep in mind that it may be misleading to compare one annuity to another unless you compare all the other features of each annuity. You must decide for yourself what combination of features makes the most sense for you. Also remember that it is not possible to predict the future behavior of an index.

QUESTIONS YOU SHOULD ASK YOUR AGENT OR THE COMPANY

You should ask the following questions about equity-indexed annuities in addition to the questions in the Buyer's Guide to Fixed Deferred Annuities.

- How long is the term?
- What is the guaranteed minimum interest rate?
- What is the participation rate? For how long is the participation rate guaranteed?
- Is there a minimum participation rate?
- Does my contract have an interest rate cap? What is it?
- Does my contract have an interest rate floor? What is it?
- Is interest rate averaging used? How does it work?
- Is interest compounded during a term?
- Is there a margin, spread, or administrative fee? Is that in addition to or instead of a participation rate?
- What indexing method is used in my contract?
- What are the surrender charges or penalties if I want to end my contract early and take out all of my money?
- Can I get a partial withdrawal without paying charges or losing interest? Does my contract have vesting? If so, what is the rate of vesting?

Final Points to Consider

Remember to read your annuity contract carefully when you receive it. Ask your agent or insurance company to explain anything you don't understand. If you have a specific complaint or can't get answers you need from the agent or company, contact your state insurance department.

[OAR Docket #06-1102; filed 5-26-06]

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

[OAR Docket #06-1103]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Life, Accident & Health Division and Consumer Assistance and Claims Division Rules
Part 9. HMO Requirements and Prohibitions
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The proposed amendments delete reference to arbitration agreements, because those agreements are invalid in HMO contracts pursuant to the 1993 decision of the Oklahoma Supreme Court, 1993 OK 40; 867 P.2d 1235 (Okla. 1993).
CONTACT PERSON:
Karl F. Kramer, First Assistant General Counsel, (405) 521-2746

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 14, 2006:

SUBCHAPTER 5. LIFE, ACCIDENT & HEALTH DIVISION AND CONSUMER ASSISTANCE AND CLAIMS DIVISION RULES

PART 9. HMO REQUIREMENTS AND PROHIBITIONS

365:40-5-44. Internal grievance system

A grievance system shall be established and maintained by an HMO to provide reasonable procedures for the prompt and effective resolution of written grievances pursuant to the HMO Act.

(1) An HMO shall provide grievance forms to be given to enrollees who wish to register written grievances. Such forms shall include the address and telephone number to which grievances must be directed and shall also specify required time limits imposed by the HMO.

(2) The grievance system shall provide for written acknowledgement of any grievance within seven (7) days from the date the grievance is registered with the HMO. Each grievance shall be resolved or finally determined within one hundred twenty (120) days after the grievance is registered. This period may be extended in the event of a delay in obtaining the documents or records from a non-contracting provider necessary for the resolution of the grievance, or by the mutual written agreement of the HMO and the enrollee.

(3) ~~If enrollee grievances may be resolved through a specified arbitration agreement, the enrollee shall be advised in writing of his or her rights and duties under the agreement at the time the grievance is registered. Any such agreement must be accompanied by a statement setting forth in writing the terms and conditions of binding arbitration. Any HMO that makes such binding arbitration a condition of enrollment must fully disclose this requirement to its enrollees in the contract and evidence of coverage.~~

~~(4)~~ An enrollee or any other person may seek the assistance of the Insurance Commissioner at any time whether or not a written grievance is submitted to an HMO by an enrollee.

[OAR Docket #06-1103; filed 5-26-06]

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

[OAR Docket #06-957]

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PERMANENT final adoption
RULES:
Subchapter 1. Function and Structure of the Office of Juvenile Affairs
377:1-1-5. Board of Juvenile Affairs [AMENDED]
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Board of Juvenile Affairs, pursuant to 10 O.S., Section 7302-1.1(H) and 7302-1.1 (I) and 75 O.S., Section 302 (A)(1).
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ANALYSIS:
Office of Juvenile Affairs (OJA) rule 377:1-1-5 is being revised due to legislative changes for OJA Board appointments and Title 10 board responsibilities.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

SUBCHAPTER 1. FUNCTION AND STRUCTURE OF THE OFFICE OF JUVENILE AFFAIRS

377:1-1-5. Board of Juvenile Affairs

(a) **Composition.** Title 10, O.S., §7302-1.1 authorizes the Board of Juvenile Affairs (Board) as the governing body for the Office of Juvenile Affairs. The Board shall consist of seven (7) members appointed by the Governor with the advice and consent of the Senate in accordance with 10, O.S. §7302-1.1. ~~One member shall be appointed from each of the six congressional districts as defined and in existence on February 1, 1995, and the seventh member shall be appointed from the state at large.~~

~~(1) One member of the Board shall have training or experience in social work.~~

~~(2) One member shall have training or experience in juvenile or criminal justice or related behavior sciences.~~

~~(3) One member shall be an attorney licensed in the State of Oklahoma selected from lists submitted by the Indigent Defense System and each of the two offices of county indigent defenders.~~

~~(4) One member shall be selected from a list submitted by the Oklahoma Commission on children and Youth.~~

~~(5) One member shall be an attorney licensed in the State of Oklahoma selected from a list submitted by the District Attorneys Council from the state at large.~~

~~(6) One member shall be an educator within a public school system in Oklahoma.~~

~~(7) One member shall be from the public.~~

~~(b) **Terms of office.** The terms of office of three members shall expire on March 15, 1999, and each six years thereafter. The terms for two members shall expire on March 15, 2000, and each six years thereafter, and the terms of two members shall expire on March 15, 2003, and each six years thereafter~~

~~(1) A member may be reappointed to succeed himself or herself for one additional term.~~

~~(2) In the event of a vacancy on the Board due to resignation, death, or for any cause resulting in an unexpired term, when such vacancy is not filled by an appointment by the Governor within ninety days of such vacancy, the Board may appoint a provisional member to serve until the Governor makes an appointment.~~

~~(c) **Compensation.** The members of the Board shall receive no compensation for their services, but shall receive reimbursement for their necessary travel expenses as provided by the State Travel Reimbursement Act.~~

(~~d~~b) **Meetings.** Regularly scheduled meetings of the Board shall be held at places, dates, and times fixed by the Board and after appropriate notice. Special meetings may be called by the Chair or by five (5) members of the Board by delivery of written notice to each member of the Board. Emergency meetings of the Board may be called as provided by Oklahoma statutes.

(1) Any member may waive notice of any meeting. The attendance of a member at a meeting shall constitute waiver of notice of such meeting except where the member attends for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called or convened.

(2) All meetings, including executive sessions, shall be conducted in accordance with the provisions of the Open Meeting Act.

(~~e~~c) **Voting.** A majority of members serving on the Board shall constitute a quorum.

(1) The acts of the majority of the members present at a meeting at which a quorum is present shall be the acts of the Board except that a vote of not less than four (4) members of the Board shall be required to amend these rules.

(2) A member may disqualify himself or herself from a vote at any time and without explanation. A member who disqualifies himself or herself from a vote shall be considered to be not present for purposes of that vote.

(~~f~~d) **Election of officers.** At the first meeting of each calendar year, the Board shall elect one of its members to serve as Chair and another of its members to serve as Vice-Chair. The Chair or Vice-Chair shall hold office until his or her successor has been duly elected or until his or her death, resignation, or removal.

(~~g~~e) **Vacancies.** A vacancy in the elected position of Chair or Vice-Chair because of death, resignation, removal, disqualification, or otherwise may be filled by the Board for the unexpired portion of the term of the position.

(~~h~~f) **Duties of the position of Chair and Vice-Chair.** The Chair, or in his or her absence, the Vice-Chair, shall preside at all meetings of the Board, including executive sessions. The Chair, or Vice-Chair as the case may be, shall be the final authority on all procedural issues, and may, when appropriate, refer to and follow the recommendations of the legal counsel for the Office of Juvenile Affairs or "Robert's Rules of Order" to resolve a procedural issue.

(1) The Chair, within two weeks of a member's new appointment, shall:

(A) brief the member of the Board regarding the duties and responsibilities of the Board and its members;
(B) provide the new member a copy of the statutes pertinent to the Board and its duties;
(C) provide a copy of the monthly operating budgets of the Office of Juvenile Affairs for the preceding twelve months;
(D) provide a copy of the rules under which the Office of Juvenile Affairs functions and operates; and
(E) provide such other information as is necessary to assure that the new member is advised of his or her duties and responsibilities.

(2) The Chair may delegate the briefing described in paragraph (1) of this subsection in whole or in part to the Executive Director of the Office of Juvenile Affairs or a managing officer of that agency, but the responsibility for its accomplishment shall remain with the Chair.

(~~i~~g) **Responsibilities.** The purpose of the Board of Juvenile Affairs is to act as the governing board for the Office of Juvenile Affairs and to implement and direct the mandates of the Oklahoma Legislature with respect to the custody, care, and supervision ~~or~~ of juveniles adjudicated to be delinquent or in need of supervision or persons sentenced as youthful offenders. The Oklahoma Juvenile Code, Title 10~~,~~ O.S., §7301 *et seq.* and other provisions of law related to children and youth gives the Board the responsibility for:

(1) promulgating rules for the Office of Juvenile Affairs and for its own governance**;**

(2) adopting an official seal for the Office of Juvenile Affairs**;**

(~~2~~3) appointing and setting the salary of the Executive Director of the Office of Juvenile Affairs;

(~~3~~4) reviewing and approving OJA's budget request to the Governor;

(~~4~~5) assisting OJA in conducting regular reviews and planning activities related to the goals, objectives, priorities, and policies of the Office;

(~~5~~6) providing a public forum for receiving comments and disseminating information to the public regarding the goals, objectives, priorities, and policies at least quarterly;

(~~6~~7) adopting nonbinding resolutions requesting action by the Office in response to comments from the public or upon ~~their~~ the Board's own initiative;

(~~7~~8) establishing OJA contracting procedures and guidelines for rates of payment for services provided by contract; provided the Board may not increase payment rates during the time the Legislature is not in session;

(~~8~~9) serving as the rulemaking body for the Office of Juvenile Affairs, including promulgating rules which implement the duties and responsibilities of the Office of Juvenile Affairs pursuant to the Oklahoma Juvenile Code;

(~~9~~10) developing performance standards for programs implemented by the Department of Juvenile Justice, either directly or by contract;

(~~10~~11) ~~appointing a temporary acting Executive Director in the event of a vacancy;~~ appointing the Executive Director, or in the event of a vacancy, designating an interim or acting Executive Director, including the Deputy Director of the Department of Juvenile Justice, until a new and permanent Executive Director is appointed;

(~~11~~12) establishing fee schedules;

(~~12~~13) advising OJA with respect to real estate leases;

(~~13~~14) approving criteria for designation of organizations as "Youth Services Agencies";

(~~14~~15) establishing an administrative hearing and appeal process for denials of "Youth Service Agency" designation;

(~~15~~16) reviewing annually the DJJ report (OJA Annual Report) which analyzes and evaluates the effectiveness of DJJ programs and services;

(~~16~~17) reviewing annually the DJJ report (OJA Annual Report) which analyzes and evaluates the effectiveness of the Youthful Offender Act;

(18) promulgating rules for the Office of Juvenile Affairs to obtain national criminal history records searches in accordance with Section 404.1 of Title 10 for personnel working with or around juveniles in the Office of Juvenile Affairs' institutions and Office of Juvenile Affairs' operated facilities;

(~~17~~19) promulgating rules, outlining policies and procedures governing the operation of facilities operated by or through contract with the DJJ;

(20) promulgating rules defining contraband for purposes of inspection;

(21) promulgating rules governing the use of mechanical restraints in institutions and other facilities operated by or through contract with the Office of Juvenile Affairs;

(22) receiving and reviewing institutional inspection reports of the State Fire Marshall and Commissioner of Public Health;

(~~18~~23) establishing standards for regimented juvenile training programs;

(~~19~~24) establishing the proposal submission and education procedures and criteria for the implementation of the Delinquency and Youth Gang Intervention and Deterrence Act;

(~~20~~25) promulgating rules necessary for the implementation of the "Juvenile Offender Victim Restitution Work Program";

(~~21~~26) adopting rules as required to implement the Serious and Habitual Juvenile Offender Program and Juvenile Justice Information System;

(~~22~~27) establishing certification standards for municipal juvenile facilities for temporary detention;

(~~23~~28) establishing standards for training with respect to military mentor programs administered by the Oklahoma Military Department;

(~~24~~29) promulgating standards for certification of juvenile detention facilities**;**

(~~25~~30) developing, adopting, and implementing the "State Plan for the Establishment of Juvenile Detention Services";

(~~26~~31) establishing procedures for the letting of contracts or grants for juvenile detention services or facilities; ~~and;~~

(32) approving a form for the statistical reporting of detention of persons under the age of 18;
(~~27~~33) establishing standards for the certification of detention services;
(34) with the State Department of Health, establishing standards for certification of jails, adult lock-ups and adult detention facilities used to detain juveniles;
(35) establishing guidelines and procedures for Juvenile Bureaus to ensure uniformity in the performance of the Juvenile Bureau's statutory duties;
(36) promulgating rules and forms necessary for the implementation of the juvenile sex offender registry; and
(37) promulgating rules for the expansion for criminal records searches or foster care eligibility assessments beyond the records searches conducted by the Oklahoma State Bureau of Investigation.

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

[OAR Docket #06-958]

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PERMANENT final adoption
RULES:
Subchapter 13. Office of Public Integrity
Part 3. Requirements for Secure Juvenile Detention Centers
377:3-13-42. Juvenile rights [AMENDED]
377:3-13-43. Staff requirements [AMENDED]
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Board of Juvenile Affairs, pursuant to 10 O.S., Section 7302-1.1(H) and 7302-1.1 (I) and 75 O.S., Section 302 (A)(1).
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ANALYSIS:
The rule (377:3-13-43) is being amended to separate the qualification for a large (20 beds or more) detention director from those of a small (less than 20 beds) detention director. The Office of Juvenile Affairs is amending 377:3-13-42 to include the OJA Advocate General in the detention center grievance process.

CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

SUBCHAPTER 13. OFFICE OF PUBLIC INTEGRITY

PART 3. REQUIREMENTS FOR SECURE JUVENILE DETENTION CENTERS

377:3-13-42. Juvenile rights

Written policy and procedure provides that facility staff shall ensure the rights of a detained juvenile are preserved. Staff shall not diminish or deny a detained juvenile his or her rights for disciplinary reasons. The rights of a juvenile in detention are subject only to the limitations necessary to maintain order and security in the facility. Each juvenile has the rights listed in (1)-(14) of this Subsection.

(1) A juvenile shall have freedom from discrimination because of race, national origin, color, creed, sex or physical handicap.
(2) Male and female juveniles shall have equal access to all programs and services offered in a detention facility housing both sexes.
(3) The facility shall have a written grievance procedure, ~~which allows for at least one level of appeal,~~ in accordance with OJA policy and approved by the Advocate General. Facility staff shall explain and make the grievance procedure available to the juvenile.
(4) A juvenile shall have the right to voluntarily participate in on-site religious services and religious counseling.
(5) A juvenile shall have access to on-site recreational opportunities, including daily outdoor exercise, weather permitting. The facility shall provide adequate and appropriate recreational equipment.
(6) A juvenile shall have access to the courts and confidential contact with attorneys and their authorized representatives. Contact includes, but is not limited to:
(A) telephone conversations;
(B) uncensored correspondence; and
(C) visits.
(7) Facility staff shall not discipline a juvenile by using:
(A) corporal or unusual punishment;
(B) humiliation;
(C) mental abuse; or
(D) punitive interference with the daily functions of living such as eating or sleeping.
(8) A juvenile shall be allowed to receive visitors according to the facility's written policy and procedures.
(9) A juvenile shall have reasonable access to the general public.

(10) A juvenile's access to the media is subject to the limitations necessary to protect the juvenile's rights and ensure the security of the facility. Media requests for interviews and juvenile consents must be in writing.

(11) A juvenile shall be allowed to determine the length and style of his or her hair, except in individual cases where restrictions are necessary for reasons of health and safety.

(12) A juvenile shall keep facial hair, if desired, except in individual cases where such restrictions are necessary for reasons of health and safety.

(13) A juvenile shall have supervision and control exercised by staff or training volunteers while at the facility.

(14) A juvenile shall receive educational instruction to which the juvenile is entitled under provisions of state education laws and regulations.

377:3-13-43. Staff requirements

(a) **General provisions.** The requirements for facility staff are set forth in this Section.

(1) **Personnel policy.** Every facility shall have written personnel policy which includes the maintenance of personnel records. The facility director shall make available to employees personnel policy and written job descriptions. The policy and job descriptions specify the person to whom the employee is responsible and the duties the employee is expected to perform.

(2) **Juveniles' tasks.** A juvenile in detention shall not be used as an employee. A juvenile in detention is permitted to perform tasks, if the tasks teach the juvenile responsibility and the juvenile is supervised. A juvenile shall not be allowed to perform tasks in areas of the facility where juveniles are not usually permitted.

(3) **Supervision.** Sufficient staff shall be available to provide continuous day and night supervision of the residents and protection of the facility as well as to allow staff relief from duty.

(4) **Auxiliary staff.** There shall be sufficient auxiliary staff to maintain adequate support services. Auxiliary staff are all staff that are not direct-care staff.

(5) **Health requirements.** Staff health requirements are given in (A)-(C) of this paragraph.

(A) Each person employed shall have a pre-employment physical examination by a licensed physician. The physical examination is performed not more than 90 days prior to employment. The physician shall verify in a written statement that the individual is physically able to perform his or her job-related functions.

(B) Upon employment each employee who has not had a documented skin test within the past 12 months shall have a Mantoux tuberculin skin test unless he/she has had a previous positive skin test.

(C) An employee with a positive skin test reaction must have or provide documentation of a chest x-ray.

(i) Additional tests or x-rays are not required unless symptoms develop that are suggestive of tuberculosis.

(ii) Employees with a positive skin test reaction must submit annual documentation by medical personnel that signs or symptoms of tuberculosis are not present.

(6) **Criminal history investigation.** The facility shall comply with statutory requirements mandating a criminal history investigation for each applicant for employment [10 O.S. Section 404.1]. The facility shall not employ or retain any person for whom there is documented evidence that the employee would endanger the health, safety, and/or well-being of juveniles.

(A) A facility shall not employ or retain an individual who has been:

(i) convicted of or entered a plea of guilty or nolo contendere to any felony involving:

(I) violence against a person;

(II) child abuse or neglect;

(III) possession, trafficking, manufacturing, sale or distribution of illegal drugs, or conspiracy to traffic, manufacture, sale, or distribute illegal drugs;

(IV) sexual misconduct; or

(V) gross irresponsibility or disregard for the safety of others;

(VI) any crime against a child; or

(ii) in the case of child abuse and neglect, identified as a perpetrator in a juvenile court proceeding and/or has made an admission of guilt to a person authorized by state or federal laws or regulations to investigate child abuse and neglect.

(B) As to a simple drug possession offender, the facility may, at its own discretion, make exceptions to the prohibition of employment if five years have passed from completion of the applicant's criminal sentence and the facility can document that the health, safety, and well-being of juveniles would not be endangered.

(i) The facility shall consider, document, and submit to the Office of Public Integrity within 10 days of the employees first day of work the:

(I) type of crime or offense for which the individual was convicted or a finding was made; and

(II) reference letters concerning the individual in question.

(ii) The Office of Public Integrity shall make a recommendation to the Executive Director as to whether the applicant shall be approved or disapproved.

(C) If there is an allegation that a staff member has committed an act as described in OAC 377:3-13-43(a)(6)(A), the facility shall determine and document whether the staff member shall be removed from contact with juveniles until the allegation is resolved.

(D) If any person is formally charged with any of the offenses described in OAC 377:3-13-43(a)(6)(A),

he or she must be removed from contact with juveniles until the charges are resolved.

(E) No employee of the facility shall use or be under the influence of alcohol or illegal drugs during hours of work.

(7) **Personnel records.** The facility shall keep on file a written personnel record available for review for every staff person employed by the facility.

(A) The personnel record includes:

(i) an application, resume or staff information sheet that documents qualifications for the position;

(ii) health records as required by the facility;

(iii) three written references and/or documentation of telephone interviews;

(iv) any reports and notes relating to the individual's employment with the facility and an annual job performance evaluations;

(v) dates of employment; and

(vi) date and reason for leaving employment.

(B) When employment is involuntarily terminated, a statement regarding the reason for termination is to be included in the personnel file.

(C) Personnel records are maintained for at least three years following a staff member's separation.

(D) All employees' records are kept confidential subject to existing state and federal statutes.

(E) Staff members shall have access to their personnel files for reviewing purposes if a request is made to the facility administrator.

(8) **Staff training.** All staff shall be trained on facility policy and procedure.

(A) Each direct-care staff member shall be provided orientation before being allowed to work independently.

(B) Auxiliary staff shall receive orientation to the facility's policy and procedure and to their assigned duties.

(C) During orientation the trainer shall acquaint staff with the philosophy, organization, program practice, and goals of the secure juvenile detention facility.

(D) "Requirements for Secure Juvenile Detention Facilities" is reviewed as a part of the orientation process and is available to staff at all times.

(E) Within 90 days after employment, all direct-care staff shall have successfully completed first aid training from an instructor certified by the American Red Cross or its equivalent. First aid training is updated every three years and may be counted toward the hours of training required.

(F) All direct-care staff shall be certified in cardiopulmonary resuscitation (CPR) within 90 days after employment and recertified annually. CPR certification shall be counted toward the training requirements.

(G) Full-time direct-care staff and administrators shall obtain at least 24 clock hours of training per employment year. Hours are prorated at two hours per month for staff who have not been employed for a full year.

(H) Part-time direct-care staff shall have training hours prorated based on the average number of hours of work per month.

(I) On-call staff shall have a minimum of six clock hours of training per year.

(J) Support staff shall obtain a minimum of 12 clock hours of training per employment year.

(K) The content of staff development courses for direct-care staff is relative to their roles and responsibilities. Content may include:

(i) crisis intervention;

(ii) child development;

(iii) behavior management;

(iv) discipline;

(v) stress management;

(vi) therapeutic relationship and intervention;

(vii) child abuse detection, reporting and prevention;

(viii) suicide prevention;

(ix) human sexuality

(x) client grievance procedures;

(xi) communicable diseases, including sexually transmitted diseases; and

(xii) any other training deemed necessary to meet individual or group training needs.

(L) Attendance at professional conferences, workshops, seminars, formal education classes, or in-service training is counted toward the training requirements provided the training is documented and meets the content requirements.

(b) **Facility Administrator.** The duties and qualifications of the facility administrator are described in (1) - (2) of this subsection.

(1) **Responsibilities.** The facility administrator is responsible for implementing the policies adopted by the governing body, the ongoing operation of the facility, and compliance with the Requirements for Secure Juvenile Detention Facilities.

(A) In the facility administrator's absence a person shall be designated to act as administrator and shall be available to detention staff in person or by telephone.

(B) A designated person of responsibility shall be at the secure juvenile detention facility at all times. The designated person is directly responsible to the administrator who is to be notified of any irregularities in the general affairs of detention and follow through with directives given.

(C) The duties of the facility administrator include, but are not limited to:

(i) preparing and presenting the budget for the appropriate authority to review and approve;

(ii) administering the budget and maintaining accurate financial records;

(iii) employing and discharging staff according to the established personnel rules;

(iv) supervising the program overall;

(v) holding staff meetings on a monthly basis to discuss plans and interpret policies to the staff;

(vi) organizing a program for the continued training and development of staff;

(vii) establishing and maintaining working relationships with other social services agencies within the community; and

(viii) interpreting the program to professional and lay groups.

(2) **Qualifications.**

(A) The education, experience, and qualifications of the administrator of ~~the~~ a large facility (20 beds or more) are specified in writing by the governing body of the facility and ~~include~~ includes, at a minimum:

(i) ~~a~~ bachelor's degree from an accredited college/university in an appropriate discipline;

(ii) two (2) years of experience working with juveniles; and

(iii) ~~three~~ five (5) years in staff supervision and administration.

(B) The education, experience, and qualifications of the administrator of a small facility (less than 20 beds) are specified in writing by the governing body of the facility and includes, at a minimum:

(i) associate's degree from an accredited junior college/college/university in an appropriate discipline (i.e. social work, sociology, psychology, criminal justice, etc.); OR

(ii) 60 hours of credits from an accredited junior college/college/university of which 15 hours must be in the appropriate discipline as indicated in (I); and

(iii) two (2) years in staff supervision; and

(iv) one (1) year of experience working with juveniles.

(~~B~~C) A facility administrator hired prior to January 1, 2000 shall be exempt from the rules set forth in (A) of this paragraph.

(3) **Location.** All facilities administrators must maintain their primary office at the detention facility.

(c) **Direct care staff.** The qualifications and hiring requirements for direct care staff are described in (1) - (2) of this subsection.

(1) **Qualifications.** All direct-care staff shall be at least 21 years of age and possess a high school diploma or its equivalent.

(2) **Hiring requirements.** A direct-care staff person can be hired when the person:

(A) has his or her character and fitness attested to by three satisfactory written references and a criminal history investigation completed;

(B) is qualified and capable of satisfactorily performing assigned job responsibilities; and

(C) does not pose a known risk to juveniles.

(d) **Support staff.**

(1) support staff shall:

(A) be able to read and write;

(B) demonstrate knowledge and skills necessary to the job assignments; and

(C) meet the requirements for direct-care staff if responsible for direct care of juveniles for any part of the day.

(2) Any support staff who provide direct-care services shall be considered direct-care staff and must meet all requirements for direct-care.

[OAR Docket #06-958; filed 5-15-06]

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

[OAR Docket #06-959]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 13. Office of Public Integrity
Part 7. Requirements for Community Intervention Centers (CIC)
377:3-13-86. Organization, administration, and finance [AMENDED]
377:3-13-88. Personnel [AMENDED]
AUTHORITY:
Board of Juvenile Affairs, pursuant to 10 O.S., Section 7302-1.1(H) and 7302-1.1 (I) and 75 O.S., Section 302 (A)(1).
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INCORPORATIONS BY REFERENCE:
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ANALYSIS:
The rules are being amended to correct the citation in 377:3-13-86. The rule 377:3-13-88 is being amended to remove the combination of education and experience from the qualification for a CIC program director. After public comments were received, the rule 377:3-13-88 was further revised to include emergency rule revisions from 7-03-2001. These revisions required CIC personnel to not have a history of crimes against children, drug use or sexual misconduct.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,

SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

SUBCHAPTER 13. OFFICE OF PUBLIC INTEGRITY

PART 7. REQUIREMENTS FOR COMMUNITY INTERVENTION CENTERS (CIC)

377:3-13-86. Organization, administration, and finance

(a) The CIC shall maintain written policies and procedures.

(1) **Organization.** The CIC shall develop a clearly defined statement of its purposes or function. The CIC program director or designee shall file the statement with the Office of Juvenile Affairs, Office of Public Integrity.

(2) **Administration and responsibility of the municipality.**

(A) The Municipality shall have responsibility for:

(~~1~~ I) providing the physical site and its use by the juveniles and staff;

(~~2~~ ii) the center's program and services;

(~~3~~ iii) reviewing and approving all CIC policies and policy changes;

(~~4~~ iv) maintaining a record of CIC policy;

(~~5~~ v) maintaining documentation and records to ensure compliance with applicable federal, state, and local law, including health, fire and safety regulations, and documenting compliance with Fire Marshal's report and the Health Department's Certification~~.~~;

(~~6~~ vi) documenting board and/or council meetings, where applicable, and keeping the documentation on file;

(~~7~~ vii) compiling and filing monthly statistical reports with the Office of Juvenile Affairs; and

(~~8~~ viii) completing an annual report of the CIC, including the information listed in 377:3-~~3~~13-83, and submitting the report to OJA, Office of Public Integrity.

(B) The contract shall be submitted to the OJA Office of Public Integrity.

(3) **Finances.** The CIC shall maintain complete financial records of income and disbursements.

(A) All financial records pertaining to the CIC shall be audited annually by a certified public accountant who has a valid, current permit to practice in the State of Oklahoma or state or tribal auditor, in accordance with the governmental funding source.

(B) A copy of the auditor's statements shall be submitted to the Office of Juvenile Affairs annually.

377:3-13-88. Personnel

(a) **CIC program director.**

(1) **Qualifications.** The qualifications (including education and experience), authority, and responsibilities of the program director shall be specified in writing by the CIC's governing body, and include:

(A) a bachelor's degree; and

(B) one year of experience working with juveniles or working in the juvenile justice system~~; or~~.

~~(C) a combination of education and experience.~~

(b) **Direct-care staff qualifications.** All direct care staff shall be at least 21 years of age and possess a high school diploma or its equivalent.

(c) **Criminal history investigation.** The CIC shall comply with statutory requirements mandating a criminal history investigation for each applicant for employment [10 O.S., §404.1 and 10 O.S., § 7003-8.1]. An employee's criminal history investigation record must be kept in a secure location, separate from his or her personnel file.

~~(1) With the exception of sex offenders, the CIC may, at its own discretion, hire an ex-offender as long as the CIC documents that the health, safety, and well-being of juveniles is not endangered. The CIC shall consider and document the:~~

~~(A) type of crime or offense for which the individual was convicted or a finding was made;~~

~~(B) nature of the offense;~~

~~(C) age of the individual at the time of the offense;~~

~~(D) circumstances surrounding commission of the offense that demonstrate the likelihood of repetition;~~

~~(E) number of offenses for which the individual was convicted or a finding was made;~~

~~(F) relationship of the offense and the individual's ability to care for juveniles;~~

~~(G) evidence of rehabilitation, e.g., activities since the offense was committed, education;~~

~~(H) opinions of references concerning the individual in question; and~~

~~(I) length of time that has elapsed since the last conviction or finding.~~

(1) A facility shall not employ or retain an individual who has been convicted of or entered a plea of guilty or nolo contendere to any felony involving:

(A) violence against a person;

(B) child abuse or neglect;

(C) possession, trafficking, manufacturing, sale or distribution of illegal drugs, or conspiracy to traffic, manufacture, sale, or distribute illegal drugs;

(D) sexual misconduct; or

(E) gross irresponsibility or disregard for the safety of others;

(F) any crime against a child; or

(G) in the case of child abuse and neglect, identified as a perpetrator in a juvenile court proceeding and/or has made an admission of guilt to a person authorized by state or federal laws or regulations to investigate child abuse and neglect.

(2) No employee of the CIC shall use or be under the influence of alcohol or illegal drugs during the hours of work nor shall any employee use or possess illegal drugs at any time.

(3) As to a simple drug possession offender, the facility may, at its own discretion, make exceptions to the prohibition of employment if five years have passed from completion of the applicant's criminal sentence and the facility can document that the health, safety, and well-being of juveniles would not be endangered.

(A) The facility shall consider, document, and submit to the Office of Public Integrity within 10 days of the employees first day of work the:

(i) type of crime or offense for which the individual was convicted or a finding was made; and

(ii) reference letters concerning the individual in question.

(B) The Office of Public Integrity shall make a recommendation to the Executive Director as to whether the applicant shall be approved or disapproved.

(4) If any person is formally charged with any of the offenses described in OAC 377:3-13-88(c)(1), he or she must be removed from contact with juveniles until the charges are resolved.

(d) **Health requirements.** An employee's health record must be kept in a secure location, separate from his or her personnel file.

(1) Each employee must have a pre-employment physical conducted by a licensed physician.

(2) Upon employment, each employee who has not had a documented skin test within the past 12 months shall have a Mantoux tuberculin skin test unless he or she had a previous positive skin test.

(3) An employee with a positive skin test reaction must have or provide documentation of a chest x-ray.

(A) Additional tests or x-rays are not required unless symptoms develop that are suggestive of tuberculosis.

(B) Employees with a positive skin test reaction must submit annual documentation by medical personnel that signs or symptoms of tuberculosis are not present.

(e) **Personnel records.** Every staff person employed by the CIC shall have a written personnel record which complies with personnel policies of the municipality or service provider. The CIC shall have written personnel policies. The program director shall make personnel policies, which include written job descriptions, available to all employees. Either the policy or job description ~~specify~~ specifies the person to whom the employee is responsible and the duties the employee is expected to perform.

(1) Each personnel record must include:

(A) an application, resume, or staff information sheet that documents qualifications for the position;

(B) three ~~references~~ reference letters, or if the reference was interviewed by phone, documentation of telephone interview must contain the:

(i) content of the interview;

(ii) date and time of the interview; and

(iii) name of employee conducting the telephone interview;

(C) documentation that the staff member was provided a copy of personnel policies, including his or her job description~~.~~;

(D) written disciplinary action forms and job performance evaluations;

(E) dates of employment; and

(F) date and reason for employment separation or termination.

(2) Personnel records shall be maintained for at least three (3) years following an employee's separation.

(3) All employee records shall be confidential subject to existing federal and state statutes.

(4) All employees shall have access to their personnel files for reviewing purposes upon request to the program director and according to agency policy.

(f) **Staff orientation.**

(1) Each direct-care staff shall be provided orientation before being allowed to work independently. In addition to a review of the certification standards and on-the-job training with an experienced staff member, the orientation must include a review of the CIC's:

(A) policies and procedures;

(B) philosophy and goals;

(C) organization;

(D) behavior management/crisis intervention training; and

(E) job expectations for the individual employee.

(2) Within 90 days of employment, each direct-care staff shall successfully complete first aid training. The training must be conducted by a certified instructor from the American Red Cross or its equivalent. The employee must be recertified in first aid every three years. First aid training may be counted as training hours. At least one staff person trained and certified in first aid shall be present in the CIC at all times.

(3) Within 90 days of employment, each direct-care staff shall be certified in cardiopulmonary resuscitation (CPR). The employee shall be recertified annually. CPR certification and recertification may be counted as training hours. At least one staff person trained and certified in CPR shall be present at all times.

(4) Within six (6) months of employment, each direct-care staff shall complete a certified class on behavior management; e.g., MAB, MANDT, CLEET, etc.

(5) The CIC must maintain written documentation of each area in which the employee received orientation.

(g) **Staff training.**

(1) All direct-care staff and program a administrators shall obtain at least 24 clock hours of training per employment year. Hours are prorated for staff who have not been employed for a full year or are part-time employees.

(2) Professional conferences, workshops, seminars, formal education classes, or in-service training ~~is~~ are considered training.

(3) Documentation of the employee's training shall be maintained in the employee's file.

[OAR Docket #06-959; filed 5-15-06]

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

[OAR Docket #06-960]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Court
377:25-5-3. Certification Hearings [REVOKED]
Subchapter 7. Custody
Part 1. General Provisions
377:25-7-1. Definitions [REVOKED]
377:25-7-3. Placement of OJA custody juveniles [AMENDED]
377:25-7-4. Short term, up to thirty day intensive, highly structured placement [REVOKED]
Part 5. Rules of Supervised~~Superviced~~ Community Placement [AMENDED]
377:25-7-27. Rules of Supervised Community Placement (SCP) [AMENDED]
377:25-7-28. Noncompliance~~Non compliance~~ with Supervised Community Placement rules [AMENDED]
377:25-7-29. District review hearing [AMENDED]
AUTHORITY:
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ANALYSIS:
The rules are being revised to revoke 377:25-5-3 as the information restates Title 10 language. 377:25-7-1 is being revoked to move the two remaining definitions to the correct sections of the rules. 377:25-7-3 is being amended to remove the individual references to levels of care and utilize a general term, "higher level of community care". The information in 377:25-7-4 is being moved to 377:25-7-29. The definition of SCP is being moved from 377:25-7-1 to 377:25-7-27. 377:25-7-28 is being amended to reflect that juveniles may be placed in a sanction program through a judicial proceeding. 377:25-7-29 is being amended to minimize the procedural information.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

SUBCHAPTER 5. COURT

377:25-5-3. Certification hearings [REVOKED]

~~Upon request of the court, JSU staff shall complete a study and schedule a psychological evaluation to:~~

~~(1) assist the court in its consideration of any motion to certify a juvenile to stand trial as an adult (10 O.S., § 7303-4.3);~~

~~(2) certify a person charged with murder in the first degree as a youthful offender or a juvenile (10 O.S., §§ 7306-1.1 and 7306-2.5);~~

~~(3) certify a youthful offender as a juvenile (10 O.S., § 7306-2.6); or~~

~~(4) certify a youthful offender for imposition of an adult sentence (10 O.S., § 7306-2.8.~~

SUBCHAPTER 7. CUSTODY

PART 1. GENERAL PROVISIONS

377:25-7-1. Definitions [REVOKED]

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

~~**"Parole"** means a status conferred on any custody juvenile found to be delinquent or a youthful offender who is:~~

~~(1) administratively released from a training school by the Parole Board; or~~

~~(2) approved by the Parole Board for release from an institution following a parole hearing.~~

~~**"Supervised community placement"** means a status conferred on a juvenile who is:~~

~~(1) adjudicated INS or delinquent, or found to be a youthful offender;~~

~~(2) committed to OJA by the court; and~~

~~(3) placed in community-based setting.~~

377:25-7-3. Placement of OJA custody juveniles

(a) Juveniles in OJA custody are placed in accordance with rules set forth in 377:10-3.

(b) After a juvenile is placed out of the home, the juvenile may be transferred to a similar facility or to a less restrictive facility without a hearing. When this occurs, the JSU worker shall notify the parent, guardian, or legal custodian by telephone and send a follow-up letter advising them of the change of placement.

(c) When a transfer of a juvenile from his or her own home, a foster home, specialized community home, or ~~Level C facility~~

to a ~~Level D, D+, or E facility~~ higher level of community care is being considered by the JSU worker, JSU worker shall discuss the proposed transfer with the supervisor. If the supervisor agrees, a district review hearing shall be held in accordance with 377:25-7-29.

(d) When a transfer of a juvenile from a community residential placement to an institutional setting is being recommended by the JSU worker, the mechanism for the transfer shall be either:

(1) an administrative transfer hearing [377:5-5-4]; or

(2) a parole revocation hearing [377:5-5-3].

(e) The JSU worker shall notify the court, district attorney, and other appropriate parties upon change of placement.

377:25-7-4. Short term, up to thirty day intensive, highly structured placement [REVOKED]

~~A short-term, up to thirty day intensive, highly structured placement is a temporary placement for the purpose of providing immediate intensive treatment which is designed to provide consequences for a juvenile's actions. The purpose of placing a juvenile in the program is to maintain the juvenile's current level of placement in his or her home or community-based residential facility. Placement in a short term, up to thirty day intensive, highly structured placement is governed by OAC 377:25-7-29.~~

PART 5. RULES OF SUPERVISED ~~SUPERVICED~~ COMMUNITY PLACEMENT

377:25-7-27. Rules of Supervised Community Placement (SCP)

(a) "Supervised community placement" means a status conferred on a juvenile who is:

(1) adjudicated INS or delinquent, or found to be a youthful offender;

(2) committed to OJA by the court; and

(3) placed in community-based setting.

(~~a~~b) Any juvenile who remains in a community placement, following a custody disposition, shall sign a uniform set of Supervised ~~community~~ Community Placement ~~rules~~ Rules (JSU-5). The Supervised Community Placement Rules include a statement that the juvenile understands that the JSU worker may add additional, more specific rules to assist with the juvenile's individual supervision/treatment needs. When additional rules are used:

(1) the juvenile, if adjudicated delinquent or found to be a youthful offender, shall acknowledge, in writing, his or her understanding that violation of the rules may result in placement in an institution; or

(2) the juvenile, if adjudicated in need of supervision, shall acknowledge, in writing, his or her understanding that rule violations may result in a change of placement.

(~~b~~c) Also included in the Supervised Community Placement Rules is an agreement by the parent, guardian, or custodian that they shall enforce the rules and cooperate with the JSU worker during the supervision period.

(~~c~~d) After reviewing the Supervised Community Placement Rules with the juvenile and family, the JSU worker shall have the juvenile and parent or guardian sign the rules. Additional rules may be added when necessary. After all participants have signed, the JSU worker shall give the juvenile and parent copies of the JSU-5, Supervised Community Placement Rules and the JSU-6, Additional Supervised Community Placement Rules.

377:25-7-28. Noncompliance ~~Non-compliance~~ with Supervised Community Placement Rules

(a) When an INS or delinquent juvenile or a youthful offender fails to comply with SCP rules, the JSU worker shall have the options of:

(1) altering the conditions to intensify or enhance service delivery;

(2) placing the juvenile in a sanctions program using the district review process or through judicial proceedings;

(3) changing the juvenile's placement; or

(4) returning to court for further intervention, including:

(A) additional conditions of SCP;

(B) change of custody; or

(C) dismissal.

(b) If the juvenile is adjudicated delinquent or found to be a youthful offender and fails to comply with SCP rules, the juvenile may be placed in an institution through an administrative transfer hearing.

377:25-7-29. District review hearing

(a) A district review hearing is an administrative process used to review a juvenile's behavior and alleged failure to respond to established individualized treatment and service plans or rules. Possible outcomes of the hearing are that the juvenile may be:

(1) placed in a sanctions program;

(2) placed in a short-term, up to thirty day intensive, highly structured ~~placement~~ program;

(3) moved from his or her home to a ~~foster home, therapeutic foster home, specialized community home, or Level C facility~~ higher level of community care;

(4) transferred to a ~~Level D, D+, or E facility~~ higher level of community care from his or her own home, a foster home, therapeutic foster home, specialized community home, or Level C facility; or

(5) given the opportunity to remain in the current placement with other community sanctions.

(b) Notification of the date, time and place for the hearing, and the specific purpose of the hearing ~~is~~ must be made either in person or by phone to the parent, guardian, or legal custodian by the JSU worker at least 24 hours prior to the hearing. ~~The district supervisor or designee shall decide whether the JSU worker from the county wherein the juvenile was last adjudicated will attend the hearing in person or by teleconference.~~

(c) The district supervisor or designee shall hold a district review hearing with the juvenile, JSU worker ~~(in person or by teleconference)~~, the juvenile's parents, guardian, or custodian,

and other ~~appropriate persons in attendance~~ authorized individuals. The county grievance coordinator ~~shall~~ may act as the juvenile's advocate in the absence of the juvenile's parent, guardian, or custodian.

(d) During the hearing, the specific, alleged violations of rules or failure to respond to the ITSP are discussed. The juvenile, the juvenile's parent, guardian, or custodian, or advocate ~~may provide any information they have regarding mitigating circumstances for the district supervisor's or designee's consideration~~ shall be given the opportunity to make a statement during the hearing. ~~(e) The district supervisor or designee is authorized to:~~

~~(1) place a juvenile in a sanctions program for a minimum of three to a maximum of five days;~~

~~(2) place the juvenile in a short-term, up to thirty day intensive, highly structured placement; or~~

~~(3) authorize the JSU worker to initiate the placement process to transfer a juvenile to a Level D, D+, or E facility from his or her own home, a foster home, therapeutic foster home, specialized community home, or Level C facility.~~

~~(f) If the district supervisor or designee makes the decision to remove the juvenile from his or her placement, the JSU worker shall document the hearing results on the JSU-7, District Review Hearing Findings and send copies to the district supervisor, juvenile's file, and, if the juvenile is being placed in a sanctions program or short-term, up to thirty day intensive, highly structured placement, the director of the program. If the result of the hearing is a change of placement, the JSU worker shall send a copy of the hearing results to the Placement Unit. The JSU worker shall include the following information on the JSU-7:~~

~~(1) juvenile's name;~~

~~(2) hearing date;~~

~~(3) county in which the district review was held;~~

~~(4) persons notified regarding the district review;~~

~~(5) date and time of notification;~~

~~(6) persons who attended the hearing;~~

~~(7) reason for hearing;~~

~~(8) interventions prior to district review hearing;~~

~~(9) decision whether to admit the juvenile to sanctions;~~

~~(10) outcome of the hearing; and~~

~~(11) additional comments.~~

~~(g) The JSU worker shall sign the JSU-7 and obtain signatures of the juvenile, parent, and supervisor.~~

~~(h) When the decision is to place the juvenile in a sanctions program or a short-term, up to thirty day intensive, highly structured placement, the JSU worker shall contact the facility to arrange admission and transportation of the juvenile. The JSU worker shall send the following information with the juvenile to a sanctions program:~~

~~(1) JSU-7;~~

~~(2) medical number;~~

~~(3) individual treatment and service plan and~~

~~(4) "Dear Provider" letter.~~

(~~i~~e) A short-term, up to thirty day intensive, highly structured program is a temporary placement for the purpose of providing immediate intensive treatment which is designed to provide consequences for a juvenile's actions. The purpose of placing a juvenile in the program is to maintain the juvenile's current level of placement in his or her home or community-based residential facility. A juvenile is initially placed in a short-term, up to thirty day intensive, highly structured ~~placement~~ program for the maximum amount of days. However, if the juvenile completes the program goals prior to the projected release date, he or she may be released from the program early. If not released early, the juvenile's status shall be reviewed every 10 days following the initial placement. The JSU worker shall prepare a report to the district supervisor or designee which discusses the juvenile's progress in the placement and whether the juvenile has reached the program goals. The district supervisor shall determine, based upon the report, whether the juvenile should remain in the short-term, up to thirty day intensive, highly structured placement.

[OAR Docket #06-960; filed 5-15-06]

TITLE 377. OFFICE OF JUVENILE AFFAIRS CHAPTER 30. RESIDENTIAL SERVICES

[OAR Docket #06-961]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
377:30-1-1. Legal base, scope, and purpose [AMENDED]
Subchapter 3. Oja-operated Group Homes
377:30-3-1. Administration [REVOKED]
AUTHORITY:
Board of Juvenile Affairs, pursuant to 10 O.S., Section 7302-1.1(H) and 7302-1.1 (I) and 75 O.S., Section 302 (A)(1).
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N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rules are being revised to reflect changes in the OJA administrative structure.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

377:30-1-1. Legal base, scope, and purpose

(a) Rules regarding community-based placements shall be issued in compliance with 10 O.S., §§ 7303-8.4 (A) and (B) and 7302-3.5 (B).

(b) Residential facilities shall be operated either directly by OJA or by contractual agreement.

(c) ~~Each zone division administrator shall be administratively responsible for OJA operated and contract residential services within the zone.~~ Residential programs may include:

(1) regimented juvenile training programs;
(2) wilderness camps;
(3) therapeutic foster care;
(4) specialized community homes (~~SUCH~~ SCH);
(5) OJA-operated group homes;
(6) contract-based residential care (CBC);
(7) independent living; and
(8) foster care.

(d) Rules for contracted residential programs, therapeutic foster care, specialized community homes, independent living, and wilderness camps are set forth in OAC 377:10-7.

(e) Rules for regimented juvenile training programs are set forth in OAC 377:10-13.

(f) A purpose of this Chapter is to describe the Office of Juvenile Affairs' (OJA) operation of group homes for juveniles in the legal custody of the Department of Juvenile Justice (DJJ). OJA-operated group homes shall be licensed by the Department of Human Services (DHS) in accordance with the Oklahoma Child Care Facilities Act, 10 O.S. §§ 401 through 408. The applicable licensing standards are found in DHS rules OAC 340:110-5-80 through 340:110-5-99 and are published by DHS in the pamphlet "Requirements for Residential Child Care Facilities." OJA-operated group homes shall be accredited by the American Correctional Association (ACA).

(g) Rules regarding the parole process are also set forth in this chapter.

SUBCHAPTER 3. OJA-OPERATED GROUP HOMES

377:30-3-1. Administration [REVOKED]

~~The zone division administrator shall be responsible for program development and direction of group home care within the zone. The group home supervisor shall coordinate planning efforts with community-related groups and service providers to ensure maximum use of available resources for juveniles placed in the facility. In order to assist providing necessary services for juveniles placed in the facility, the group home supervisor shall cooperate with:~~

~~(1) OJA departments and divisions;~~
~~(2) state agencies;~~
~~(3) political subdivisions and municipalities; and~~
~~(4) appropriate private agencies and organizations.~~

[OAR Docket #06-961; filed 5-15-06]

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

[OAR Docket #06-962]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 11. Juvenile Rules/discipline
377:35-11-2. Waiver of Intensive Treatment Program Transfer Hearing [REVOKED]
377:35-11-3. Intensive Treatment Program Transfer Hearing [AMENDED]
AUTHORITY:
Board of Juvenile Affairs, pursuant to 10 O.S., Section 7302-1.1(H) and 7302-1.1 (I) and 75 O.S., Section 302 (A)(1).
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SUPERSEDED EMERGENCY ACTIONS:
N/A
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rules are being revised to reflect the new Intensive Treatment Program Transfer process. The new process will establish one hearing and a staffing for admission to ITP.
CONTACT PERSON:
Robert Morey, (405) 530-2820.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

SUBCHAPTER 11. JUVENILE RULES/DISCIPLINE

377:35-11-2. Waiver of Intensive Treatment Program Transfer Hearing [REVOKED]

~~A juvenile may waive an Intensive Treatment Program Transfer Hearing. However, a waiver of the Intensive Treatment Program Transfer Hearing shall not be effective without the juvenile first having consulted with counsel or counsel substitute (student defender). A waiver of the Intensive Treatment Program Transfer Hearing will not relieve the Department from conducting the institutional screening processes~~

377:35-11-3. Intensive Treatment Program Transfer ~~Hearing~~ Process

(a) The Intensive Treatment Program (ITP) Transfer ~~Hearing~~ is an administrative ~~hearing to establish a finding(s) of fact on rule violations and/or~~ process to determine whether the juvenile is dangerous and poses a threat in the current ~~institution. The juvenile may~~ placement and should be transferred to a more secure and intensive treatment setting. ~~Prior to admitting a juvenile to a more secure setting and, when possible, prior to referral for ITP screening, a hearing shall be held, except in an emergency.~~ In emergency transfers, such due process safeguards are instituted immediately following the transfer. The OJA Executive Director or designee shall authorize all emergency transfers.

(b) Following a confirmed finding of a qualifying rule violation, and prior to transfer, the following shall occur:

(1) completion of ITP screening;

(2) an ITP staffing. The Advocate Defender shall be present at the ITP staffing to assist the juvenile in representation;

(3) a 2/3 vote of the ITP staffing committee members.

[OAR Docket #06-962; filed 5-15-06]

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

[OAR Docket #06-973]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
Commissioner of Labor; 40 O.S. 407
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n/a
INCORPORATIONS BY REFERENCE:
Incorporated standards:
The rule incorporates by reference the Federal Occupational Safety and Health Standards 29 CFR 1908, 29 CFR 1908.5(a), 29 CFR 1908.7, as published in the Code of Federal Regulations ("CFR"), and 29 USCA 655, Section 6, and 29 USCA 656(21)(d), as published in the United States Code Annotated ("USCA"). The rules also incorporate by reference Federal Occupational Safety and Health Standard 29 CFR 1904, et seq., as published in the CFR and as may hereafter be revised in the CFR with the following exceptions: (1) that Subpart B (1904.1, 1904.2, 1904.3 and Appendix A), 1904.37, 1904.38, 1904.39, 1904.40, 1904.41, 1904.42, 1904.45, and, in 1904.7(b)(2), the sentence stating, "You must also report any work-related fatality to OSHA within eight (8) hours, as required by '1904.39" shall not be included; (2) that the definition of "Act" pursuant to 29 CFR 1904 shall ~~means~~mean the Oklahoma Occupational Safety and Health Act of 1970 Title 40 O.S. Section 401 et seq.; (3) that all references in 29 CFR 1904 to the Assistant Commissioner or Regional Commissioner of the Bureau of Labor Statistics be changed to Oklahoma Department of Labor; (4) that all references in 29 CFR 1904 to OSHA No. 300 shall be changed to OK 300; all references to OSHA 300A shall be changed to OK 300A; and references to OSHA No. 301 shall be changed to OK 301; (5) the definition of "you" in 29 CFR 1904.46 shall mean"employer" as defined in 40 O.S. 402; (6) that 29 CFR 1904.46 Definition of Establishment (2) shall be changed to: (2) Can an establishment include more than one physical location? Yes, but only if the direct dailysupervision of all staff is the responsibility of one common individual.
Incorporating rules:
380:40-1-5
380:40-1-23
Availability:
Oklahoma Department of Labor, 4001 N. Lincoln Blvd., Oklahoma City, Oklahoma 73105; Hours: 8 a.m. through 5 p.m., Mondays through Fridays, excluding holidays.
ANALYSIS:
These amendments define "establishment," and provide notice of the requirement of the State and its political subdivisions to supply employment injury and illness information to the Oklahoma Department of Labor ("ODOL") as required by 40 O.S. Section 417. They provide notification that submitted, unsigned complaints and signed de minimis complaints will be handled as determined by ODOL. They also outline basic OSHA Consultation procedures mentioned in 40 O.S. Section 414, and pursuant to the enactment of Senate Bill 1X on June 6, 2005, these amendments implement an exemption from taxable income the amount of One Thousand Dollars ($1,000.00) for the tax year beginning in the year 2006 to eligible employers who utilize and successfully complete the Safety Pays OSHA Consultation Services provided by the Oklahoma Department of Labor.
CONTACT PERSON:
Elizabeth J. Stefanik, (405) 528-1500, x 231

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. § 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

380:40-1-5. Recordkeeping

(a) The currently published Federal Occupational Safety and Health Standard 29 CFR 1904, et seq., shall be automatically adopted by incorporation as published in the Code of Federal Regulations and as may hereafter be revised in the Code of Federal Regulations with the following exceptions:

(1) that Subpart B (1904.1, 1904.2, 1904.3 and Appendix A), 1904.37, 1904.38, 1904.39, 1904.40, 1904.41, 1904.42, 1904.45, and, in 1904.7(b)(2), the sentence stating, "You must also report any work-related fatality to OSHA within eight (8) hours, as required by '1904.39" shall not be included;

(2) that the definition of "Act" pursuant to 29 CFR 1904 shall ~~means~~mean the Oklahoma Occupational Safety and Health Act of 1970 Title 40 O.S. Section 401 et seq.;

(3) that all references in 29 CFR 1904 to the Assistant Commissioner or Regional Commissioner of the Bureau of Labor Statistics be changed to Oklahoma Department of Labor;

(4) that all references in 29 CFR 1904 to OSHA No. 300 shall be changed to OK 300; all references to OSHA 300A shall be changed to OK 300A; and references to OSHA No. 301 shall be changed to OK 301;

(5) the definition of "you" in 29 CFR 1904.46 shall mean"employer" as defined in 40 O.S. 402.

(6) that 29 CFR 1904.46 Definition of Establishment (2) shall be changed to: (2) Can an establishment include more than one physical location? Yes, but only if the direct daily supervision of all staff is the responsibility of one common individual.

(b) In accordance with 40 O.S. § 417, the State and all its political subdivisions which has in its employ one or more individuals performing services for it in employment shall report to the Oklahoma Department of Labor all injury and illness related information, as requested. This information shall be submitted/reported on forms including but not limited to the OK 300, OK 300A and OK 301, and in a manner prescribed by the Oklahoma Department of Labor. This information includes, but is not limited to; amounts and types of injuries and illnesses, experience modification rates, worker's compensation premiums and claims information and, injury and illness case characteristics and demographics.

380:40-1-14. Complaints by employees

(a) Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Oklahoma Department of Labor. Any such notice shall be submitted in writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy shall be provided to the employer or his agent no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy. Any complaint that is received unsigned or in any other manner, including but not limited to; by telephone, e-mail, or verbally by any other person than that which is listed above, the Oklahoma Department of Labor may determine in what manner it will be addressed. The Oklahoma Department of Labor may determine to conduct an inspection, determine that an inspection is not warranted, or may fax or mail a notification of alleged hazards to the employer.

(b) If upon receipt of such notification, it is determined that the complaint meets the requirements set forth in paragraph (a) of this section, and that there are reasonable grounds to believe that the alleged violation exists, the Director shall cause an inspection to be made as soon as practicable, to determine if such alleged violation exists. Inspections under this section shall not be limited to matters referred to in the complaint.

(c) Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the PEOSH Inspector in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with the requirements of paragraph (a) of this section.

(d) If it is determined by the Oklahoma Department of Labor that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a compliant, the complaining party shall be notified in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Commissioner and, at the same time, providing the employer with a copy of such statement by certified mail. The employer may submit an opposing written statement of position to the Commissioner and, at the same time, provide the complaining party with a copy of such statement. Upon the request of the complaining party or the employer, the Commissioner, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral views presented, the Commissioner shall affirm, modify, or reverse the determination of the Director and furnish the complaining party and the employer a written notification of this decision and the reasons therefore. The decision of the Commissioner shall be final and not subject to further review.

(e) If it is determined that an inspection is not warranted because the requirements of this section have not been met, the complaining party shall be notified in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of subsection (a) above.

(f) If it is determined by the Oklahoma Department of Labor that an inspection is not warranted due to a non-serious issue in the complaint, a notification of alleged hazards may be faxed or mailed to the employer. The employer shall respond to ODOL in writing within 10 working days of receipt of notification of alleged hazards. The employer is required to post the notification of alleged hazards in a prominent place for employees to see, and notice of the posting shall be signed by the employer and returned to the Oklahoma Department of Labor.

380:40-1-23. Safety Pays OSHA Consultation Services - Private Sector

(a) **Purpose.** Pursuant to 40 O.S. § 414 et seq., the Occupational Safety and Health Consultation Program for private employers is designed to provide comprehensive safety and health services to Oklahoma employers in accordance with Title 29 of the U.S. Code of Federal Regulations, Part 1908, Consultation Agreements, the current U.S. DOL, OSHA Consultation Policies and Procedures Manual ("CPPM"), and in compliance with Section (6) of Public Law 91-596, also known as the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C.A. § 655), and the Consultation and Cooperative Agreements pursuant to Section 21(d) of 29 U.S.C. § 656. This Consultation Program is independent of federal enforcement, and the services are provided at no cost to the employer. The program services are supported by Federal and State Funds. ODOL is able to provide this consultation service in accordance with 29 CFR 1908 through the Cooperative Agreement to further the goal of preventing the occurrence of injuries and illnesses which may result from exposure to hazardous workplace conditions and from hazardous work practices. Private employers who qualify and successfully complete the Safety Pays OSHA Consultation Services may be eligible for a tax exemption of One Thousand Dollars ($1,000.00) for the tax year in which the program is successfully completed.

(b) **Program Eligibility.** An employer must meet the employer eligibility criteria pursuant to the CPPM in order to qualify for certain recognition and incentive programs in connection with the consultation services. These programs are geared for small businesses, in high-hazard industries. Due to frequent Federal updates and revisions, it is best to contact ODOL OSHA Consultation Division to verify the most up-to-date specific eligibility requirements.

(c) **On-Site Consultation Services.** Consultation visits will be performed in accordance with 29 CFR 1908 and the current US DOL Consultation Policies and Procedures Manual. On-site consultation visits will be performed based on the scope of the employers request for services. The employer may limit, expand the scope of, or terminate the visit at anytime. The visit shall be followed by a written report to the employer with evaluations and recommendations to improve the health and safety of the employees. A follow-up consultation visit may be required in some cases, depending on the identified hazard and/or the particular recognition and incentive program being followed. The on-site consultation visits have a structured format which include:

(1) an opening conference;
(2) a survey of the physical workplace;
(3) safety and health program assessment;
(4) an employee exposure monitoring as necessary; and
(5) a closing conference.

(d) **Confidentiality.** Information obtained as a result of a consultation visit shall be confidential. The identity of employers requesting onsite consultation, as well as the file of the consultant's visit shall not be provided to anyone except the employer for whom it was prepared, and the limited exceptions listed in 29 CFR 1908.7.

(e) **Recognition and Incentive Programs.** By participating and successfully completing a **full-service** consultation employers may be eligible to qualify for the following beneficial programs:

(1) **SHARP.** ODOL administers the Safety and Health Achievement Recognition Program ("SHARP") in accordance with the 21(d) Consultation Cooperative Agreement, as stated in the OSHA Act, and as outlined in the current CPPM. Employers who meet the eligibility criteria and on-going program requirements may be removed from Federal OSHA's Programmed Inspection Schedule for a period of not less than one year.

(2) **WCPR.** ODOL administers the state sponsored Worker's Compensation Premium Reduction Program ("WCPR") pursuant to the provisions of Title 40 O.S. § 414 (H) and Title 36 O.S. § 924.2. For further explanation of WCPR and the specific eligibility requirements, see 80:41.

(f) **Tax Exemption.** Pursuant to the enactment of Senate Bill 1X on June 6, 2005, this section and subsection provide for an exemption from taxable income in the amount of One Thousand Dollars ($1,000.00) for the tax year in which eligible employers successfully complete the Safety Pays OSHA Consultation Services provided by ODOL. Oklahoma employers meeting the eligibility requirements for consultation services prescribed by the current CPPM, that request and successfully complete a full-service consultation visit (safety, health, or both) and meet the conditions of the opening conference agreement may be eligible for the $1,000.00 tax exemption for the physical location covered by the request for consultation services. The tax exemption will be awarded for the year the full-service consultation service was successfully completed. Upon this successful completion a letter will be provided from the ODOL Consultation Division to the employer confirming this successful completion. This letter will serve as the official notification that the employer has met the requirements for the full-service consultation service and is eligible for the tax exemption through the Oklahoma Tax Commission.

(g) **Promoting and Managing Consultation Services.** Pursuant to 29 CFR 1908.5(a) ODOL shall be responsible for encouraging employers to request consultative assistance and shall publicize the availability of its consultation service and the scope of the services available. The agency will promote the availability of consultation services to employers through a variety of methods and techniques, including broad-based media campaigns. Outreach activities will be designed to recognize and target unique circumstances relevant to Oklahoma and reach those employers who will benefit most from the consultation service. Outreach methods may include, but are not limited to the following:

(1) Speeches or presentations;
(2) Direct solicitation of employers;
(3) Public presentations (trade shows, association meetings, etc.);
(4) Television and Radio talk shows;
(5) Cooperative training seminars;
(6) Roundtable discussions;

(7) Safety and health conferences and conventions;
(8) Participation in association meetings;
(9) Publications;
(10) Websites.

[OAR Docket #06-973; filed 5-18-06]

TITLE 429. OKLAHOMA LOTTERY COMMISSION
CHAPTER 1. GENERAL ADMINISTRATION

[OAR Docket #06-1032]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
429:1-1-1. [RESERVED]
429:1-1-2. Applicability [NEW]
429:1-1-3. Definitions [NEW]
429:1-1-4. Public Accountability [NEW]
429:1-1-5. Procedures for Retailer Appeal to Board [NEW]
429:1-1-6. Officers [NEW]
AUTHORITY:
Oklahoma Lottery Commission, Board of Trustees, 3A O.S., Sections 707, 709 and 710
DATES:
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429:1-1-1 [RESERVED]
429:1-1-2 Applicability [NEW]
429:1-1-3 Definitions [NEW]
429:1-1-4 Public Accountability [NEW]
429:1-1-5 Procedures for Retailer Appeal to Board [NEW]
Gubernatorial approval:
October 10, 2005
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23 Ok Reg 171
Docket number:
05-1279
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rules establish general operating rules for the Lottery Commission and the Board of Trustees as authorized by Title 3A, Section 709 of the Oklahoma Statutes. The rules establish procedures for retailer appeal to the Board; officers of the Board; terms of the officers; and how to fill vacancies in the offices.

CONTACT PERSON:
Rollo Redburn, Administrative Rules Liaison, (405) 522-7700, Oklahoma Lottery Commission, 3817 N. Santa Fe, Suite 175, Oklahoma City, OK 73118-8508; or, Terri Jackson, Administrative Assistant, (405) 522-7700, Oklahoma Lottery Commission, 3817 N. Santa Fe, Suite 175, Oklahoma City, OK 73118-8508.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

429:1-1-1. [RESERVED]

429:1-1-2. Applicability

This Chapter explains the nature and general operations of the Oklahoma Lottery Commission. The rules have been promulgated for the purpose of administrating and enforcing the Oklahoma Education Lottery Act, Sections 701 et seq. of Title 3A of the Oklahoma Statutes. The Oklahoma Lottery Commission (OLC) Board of Trustees may amend these Rules and/or adopt new Rules as necessary to administer the Act. In the event of a conflict between the Act and these Rules, the Act will govern.

429:1-1-3. Definitions

In addition to terms defined in the Oklahoma Education Lottery Act, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Act" means the Oklahoma Education Lottery Act.

"Active Game" means a lottery game currently available for sale from the Oklahoma Lottery Commission.

"Activated Pack" means the status of a pack of tickets which indicates to the OLC that tickets are being sold from that pack.

"Altered Ticket" means any ticket intentionally changed by a player or by other persons or means in an attempt to make the ticket appear as a winning ticket.

"Authorized Location" means a business authorized by a contract with OLC to sell OLC Lottery products. **"Authorized Location"** and **"Authorized Retailer"** are synonymous terms.

"Automatic Win Symbol" means any symbol that, when revealed under the removable covering on an instant ticket, automatically wins a prize for the player.

"Breaks" means a gap of one or more numbered instant tickets in a pack number sequence.

"Cancelled Ticket" means any OLC ticket for which the ticket sale and/or validation information has been deleted from OLC records.

"Caption" means the letters appearing near the play symbols in the instant ticket play area that verify the correctness of play symbols.

"Certified Drawing" means a drawing in which the lottery and an independent accountant attests that the drawing

equipment functioned properly and that a random selection of a winning combination has occurred.

"Claim Center" means an OLC authorized location available to pay claims for prizes of more than $600. A "Claim Center" may also be a retailer authorized by the Board to pay prizes up to five thousand dollars ($5,000.00) without regard to where the ticket or share was purchased, after performing validation procedures appropriate to the game and as specified by the Board.

"Claim Form" means the printed form authorized by OLC that a player shall complete and submit to OLC along with a ticket to determine eligibility for prize payment, in the event that such prize has not been validated and paid by an OLC retailer.

"Claimant" means a player who has submitted a claim for prize payment.

"Claim Period" means the period of time prescribed by the Act during which players must claim cash prizes. For instant games, the claim period is ninety (90) days after the announced end of the game. For online games, the claim period is one hundred eighty (180) days after the drawing date.

"Computer Selected Items" means numbers or groups of numbers selected for a player by the computer in online games. Also known as auto picks, quick picks, or computer picks.

"Counterfeit Ticket" means any ticket not produced by an OLC authorized ticket printer or an OLC online games sales terminal.

"Defectively Printed Tickets" means the same as misregistered ticket.

"Display Printing" means the printing on the ticket not associated with the ticket game play.

"District Office" means an OLC claim center, if any, in various cities in Oklahoma.

"Disputed Ticket" means a ticket which the claimant believes is a prize winning ticket, but which fails OLC validation procedures.

"Doubler" means any method used on a ticket to double a prize amount.

"Draw Procedures" means the written document approved by OLC that specifies the process for selecting winners for a particular instant game or instant game promotion, if a drawing is designed as part of the game or promotion, and for each online game or online game promotion.

"Drawing" means the process by which the lottery randomly selects numbers or items in accordance with the specific game rules or game promotion rules for those games or game promotions requiring random selection of numbers or items.

"Duplicate Ticket" means a ticket produced by photograph, xerography or any other duplication method other than an authorized instant ticket printed for OLC or generated by an authorized online terminal.

"Electronic Funds Transfer" or **"EFT"** means the process by which the OLC transfers funds from a retailer authorized bank account to pay amounts due the OLC or by which OLC provides funds to a retailer for payment of prizes.

"Entry" means a lottery ticket or other OLC authorized document submitted to OLC or any OLC authorized party for participation in an OLC drawing.

"Executive Director" means the chief executive officer and administrator of the Oklahoma Lottery Commission.

"Finalist" means a person selected through a preliminary drawing for participation in a grand prize drawing.

"Floating Image Play Area" means the play area of each instant ticket which may print in a slightly different position on game tickets as a security measure.

"Game Board" means a pre-printed OLC form for use by players in selecting numbers for online games (see "Play Slip").

"Game Name" means the name of the Instant or Online game, as specified in the game procedures.

"Game Number" means the preprinted number on an instant ticket which identifies a particular game.

"Game Report" means a report prepared after a game end showing, at a minimum, the number of tickets sold and the number of prizes awarded in the game.

"Game Specifications Document" means the same as working papers.

"Grand Prize Drawing" means an event in which qualified players/contestants are awarded prizes in a random manner and as provided in OLC approved procedures.

"High-Tier Prize" means a prize of $601 or more.

"Instant Game" means an instant ticket lottery game offered by OLC for sale to the public that is played by revealing a hidden play area on a ticket to display the play symbols.

"Instant Game Procedures" means the document summarizing the game specifications as provided in the working papers for each Instant Game.

"Instant Game Promotion Procedures" means the OLC approved procedures for player participation in any Instant Game Promotion.

"Jackpot" means a large prize; often the top prize in an online game.

"Lottery Retailer" or **"Retailer"** means a business entity contracted to OLC to sell lottery tickets.

"Low-Tier Prize" means a prize of twenty-five dollars ($25) or less.

"Mid-Tier Prize" means a prize of $25.01-$600.

"Minor" means an individual younger than 18 years of age.

"Miscut Ticket" means a ticket cut during production such that the ticket is not whole and able to be validated.

"Misregistered Ticket" means any ticket on which printed data has been misprinted in such a manner as to prevent reading during the validation process.

"Mutilated Ticket" means any lottery ticket accidentally or intentionally damaged such that completion of OLC validation procedures is not possible.

"Non-Cash Prize" means merchandise prizes offered in lottery games or lottery promotions.

"Oklahoma Lottery Retailer Contract" means Parts 1 through 8 of the Lottery Retailer Sales Contract Application, Title 3A, Section 701 ff of the Oklahoma Statutes as amended, Emergency and Permanent Rules approved by the OLC Board. As used in these Rules the terms, **"Retailer Contract,"** **"Oklahoma Ticket Sales Contract,"** **"Lottery Retail Sales**

Contract," and **"Lottery Retailer Sales Contract"** all mean **"Oklahoma Lottery Retailer Contract".**

"OLC" means the Oklahoma Lottery Commission.

"Online Game" means a game where tickets or shares are purchased through a network of sales terminals located at OLC authorized retail outlets through use of an OLC authorized play slip or manual retailer input of player requested numbers. "On-line Game" does not include a game played via the Internet.

"Online Game Procedures" means the document summarizing game specifications for each online game offered for sale by OLC.

"Online Game Promotion Procedures" means the document summarizing promotion specifications for each online game promotion offered by OLC.

"Online Terminal" means the OLC authorized sales terminal used to sell various online lottery number games.

"Pack" or **"Pack Size"** means a package of instant tickets, each ticket with a different number. The number of tickets in a pack is generally from 60 to 500.

"Pack Number" means the unique number on the ticket that designates each pack of instant tickets in the game. Each pack number is unique within each instant game.

"Play Area" means the covered area of an instant ticket that contains the ticket play symbols.

"Play Central ® Lottery Kiosk" means a self-service ticket vending machine that allows the player to purchase instant tickets and/or online game tickets without any clerk assistance.

"Play Panel" means an area on an online game play slip or game board used by a player to select numbers for a single online game play.

"Play Slip" means a pre-printed OLC form for use by players in selecting numbers for online games (see game board).

"Play Spot" means an authorized area on an instant ticket containing one play symbol and one caption.

"Play Station" means a stand-alone unit provided by OLC for the display of lottery game brochures play slips, etc.

"Play Style" means the method of play to determine a winner for an individual game or game promotion.

"Play Symbol" means the printed data under the removable covering on the front of an instant ticket that is used to determine eligibility for a prize. The symbols for individual games will be specified in individual instant game procedures.

"Player-Selected Item" means a number or item or group of numbers or items selected by a player in connection with an online game.

"Point of Sale Material" or **"POS"** means flyers, brochures, posters and signage used within/at lottery retail locations to identify the products and games available for sale, as well as to provide general information (i.e. odds, jackpot amounts, prize levels and beneficiaries).

"Point of Purchase Material" or "POP" is synonymous with POS.

"Preliminary Drawing" means an event for the selection of contestants for a grand prize drawing.

"Price Point" means the retail selling price of an individual game ticket.

"Printer Omitted Tickets" means any tickets designated by OLC's instant ticket printer as having been omitted from the ticket order quantity for reasons stated by the ticket printer.

"Prize" means a cash amount or product (merchandise) that can be won in a lottery game or game promotion.

"Prize Drawing" means a method for determining game or game promotion winners, as defined in OLC procedures.

"Prize Structure" means the number, value, and odds of winning prizes for an individual game as approved by OLC in individual game procedures.

"Retailer" means a business which sells lottery tickets or shares on behalf of OLC pursuant to a retailer contract.

"Retailer Commission" means the amount of money paid to retailers for selling lottery products.

"Retailer Paid Prizes" means prizes which may be paid by retailers subject to OLC validation procedures.

"Retail Sales Price" means the OLC designated price OLC retailers must charge for a ticket when sold.

"Retailer Ticket Order Quantity" means the number of tickets or packs of tickets ordered by the retailer from OLC or its authorized distributor.

"Retailer Validation Code" means the code found under the covered area over the play symbols on the front of the instant ticket which the OLC retailer may use to verify and validate low-tier winners.

"Settled Pack" means the status of an activated pack of instant tickets when the OLC has invoiced the retailer based upon a pre-determined formula or schedule and the retailer has paid for the pack.

"Share" means any intangible evidence of participation in a lottery game.

"Ticket" means any tangible evidence issued by the lottery to provide participation in a lottery game or drawing authorized by the Act.

"Ticket Number" means the number on the ticket that refers to the ticket sequence within the pack.

"Ticket Order Quantity" means the number of tickets or packs of tickets ordered by OLC from the instant ticket printer.

"Unreadable Ticket" means any ticket on which any play data or other ticket validation information cannot be read as part of the prize validation procedure.

"**Validation Number"** means the unique data printed on a ticket that enables verification of the ticket as a valid winner.

"Validation Procedures" means the procedures utilized by OLC and/or its authorized vendors to determine if a claimed ticket is a valid winner.

"Valid Ticket" means a ticket which meets all OLC game specifications and OLC validation requirements.

"Variant" means a symbol used in conjunction with certain play styles and may include a symbol that serves as a "wild card" to complete a winning combination of play symbols.

"VIRN (Void If Removed Numbers)" means a series of numbers under the removable covering on an instant ticket to be used in the validation process.

"Wild" means a symbol or word, different from all the others in an instant game, used to complete a match on a winning ticket.

"Working Papers" means the written document approved by the OLC for instant game production that includes, among other things, the game name, the art work for the front and back of the ticket, how a prize is won, game prize structure, play style, ticket delivery schedule to OLC, and eligibility for a drawing, if any.

429:1-1-4. Public accountability

(a) The OLC and Board will operate pursuant to the Oklahoma Open Records Act and the Oklahoma Open Meeting Act.

(b) In the promulgation of rules, the Board shall be subject to the Administrative Procedures Act (75 OS, §250 et seq).

429:1-1-5. Procedures for retailer appeal to Board

(a) The provisions of this rule are provided to retailers who wish to appeal the cancellation, denial, revocation, temporary suspension, suspension or rejection of renewal of a lottery retailer contract by the executive director or designee.

(b) These rules shall be given the most reasonable meaning, taken in their total context, and will be construed to secure due process in the resolution of retailer appeals. They shall not be construed to limit legal rights or obligations of any party.

(c) The executive director shall designate a member of the Oklahoma Lottery Commission (OLC) staff to evaluate lottery retailer contracts. That designee may:

(1) Temporarily suspend a lottery retailer contract without prior notice pending any prosecution, hearing, or investigation, whether by a third party or by the OLC; or,

(2) Cancel, suspend, deny, revoke, terminate, or reject renewal of a lottery retailer contract when it is in the best interest of the lottery, the public welfare, or the State of Oklahoma, and shall promptly notify the retailer of such action.

(d) Retailers will be notified by certified mail at the last retailer address known to the OLC. The notification will outline the reasons for OLC's action and advise retailers of their right to appeal to the executive director.

(e) Retailers shall have twenty (20) days from the date of the notice of the (1) temporary suspension or (2), cancellation, suspension, denial, revocation, termination, or rejection of renewal of a lottery retailer contract to appeal to the executive director. Appeals shall be filed and signed by the retailer and shall set out therein:

(1) The name, address and retailer's certificate number;

(2) The argument and/or legal authority upon which each assignment of error is made;

(3) A statement of relief sought by the retailer; and

(4) A verification by the retailer that the statements and facts contained therein are true.

(f) The executive director will consider the appeal of the (1) temporary suspension or (2) cancellation, suspension, , denial, revocation, or termination or rejection of renewal of a lottery retailer contract by the OLC designee and shall fix a date for a hearing.

(1) The hearing date shall be set within thirty (30) days of the date the appeal is received.

(2) Notice of the time, date and location of the hearing will be sent to the parties.

(3) The executive director shall issue a written order after the hearing which shall be sent by certified mail to the retailer within thirty (30) days of the hearing date.

(g) Any aggrieved party to the contract may appeal the order of the executive director to the Board of Trustees of the OLC by filing a notice of such appeal with the executive director within twenty (20) days of the mailing of the written order by the executive director. Such appeal must specify the grounds upon which the party alleges the executive director's order to be erroneous.

(h) The Board of Trustees will hear the appeal of the order of the executive director and shall fix a date of hearing, at which time the Board shall be authorized and empowered to hear evidence pertinent to the appeal.

(1) Notice of the time, date and location of the hearing will be sent to the parties.

(2) The Board may, in its discretion, vacate, modify, or affirm, in part or whole, the order of the executive director.

(3) The Board shall issue a written order in each case within sixty days of the hearing date.

(i) Orders of the Board shall be subject to judicial review (3A OS, §730).

429:1-1-6. Officers

(a) **Officers.** The officers of the Board of Trustees shall be a Chair, Vice Chair, Secretary and Treasurer. No member of the Board shall hold more than any one office at the same time.

(b) **Terms of Officers.** Officers of the Board of Trustees shall be elected annually, prior to January 1st of each calendar year, to serve a term of one (1) year in the calendar year following their election. The affirmative vote of a majority of present and voting Board members shall be required for the election of each officer.

(c) **Limit on Terms of Officers.** A Board member may not serve more than three consecutive years in the same office. For this purpose service of a partial year in calendar year 2005 shall be counted as one of the three years. A Board member may serve in any other office following three years of service in the same office and may be elected for additional service in the same office after serving a three year term so long as there has been one full year in which that Board member did not serve in that office.

(d) **Vacancies.** In the event of a vacancy in any of the offices listed in (a) of this Section, the Board of Trustees shall elect a successor to such office to fill the unexpired term of the officer previously elected to such office. In the event of a vacancy in the office of Chair, the Vice Chair shall serve as Chair until election of a successor Chair. In the event of a vacancy in the office of Vice Chair, Secretary or Treasurer, the Chair may appoint from among the Board of Trustees a person to serve as such officer in the vacant office until election of a successor to that office.

[OAR Docket #06-1032; filed 5-22-06]

TITLE 429. OKLAHOMA LOTTERY COMMISSION
CHAPTER 10. RETAILER PROVISIONS

[OAR Docket #06-1033]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
429:10-1-1 [RESERVED]
429:10-1-2 Definitions [NEW]
429:10-1-3 Retailer Compensation [NEW]
429:10-1-4 Retailer Selection Criteria [NEW]
429:10-1-5 Acceptance and Return of Instant Lottery tickets [NEW]
429:10-1-6 Acceptance of Online Tickets [NEW]
429:10-1-7 Payment of Prizes [NEW]
429:10-1-8 Minimum Sales Requirement [NEW]
429:10-1-9 Merchandising [NEW]
429:10-1-10 Settlement and Retailer Invoicing [NEW]
429:10-1-11 Banking, Deposits and Payment Requirements [NEW]
429:10-1-12 Damage to OLC Provided Equipment [NEW]
AUTHORITY:
Oklahoma Lottery Commission, Board of Trustees, 3A O.S., Sections 707, 709 and 710
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February 17, 2006
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February 21, 2006
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March 2, 2006
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April 17, 2006
Legislative approval:
Failure of the Legislature to disapprove the rules resulted in approval on April 28, 2006
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April 28, 2006
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Superseded rules:
429:10-1-1 [RESERVED]
429:10-1-2 Definitions [NEW]
429:10-1-3 Retailer Compensation [NEW]
429:10-1-4 Retailer Selection Criteria [NEW]
429:10-1-5 Acceptance and Return of Instant Lottery tickets [NEW]
429:10-1-6 Acceptance of Online Tickets [NEW]
429:10-1-7 Payment of Prizes [NEW]
429:10-1-8 Minimum Sales Requirement [NEW]
429:10-1-9 Merchandising [NEW]
429:10-1-10 Settlement and Retailer Invoicing [NEW]
429:10-1-11 Banking, Deposits and Payment Requirements [NEW]
429:10-1-12 Damage to OLC Provided Equipment [NEW]
Gubernatorial approval:
October 10, 2005
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23 Ok Reg 174
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SUPERSEDED EMERGENCY ACTIONS:
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429:10-1-3 Retailer Compensation [NEW]
429:10-1-4 Retailer Selection Criteria [NEW]
Gubernatorial approval:
October 20, 2005
Register publication:
23 Ok Reg 179
Docket number:
05-1296
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rules establish general operating rules for the Lottery Commission relating to retailers as authorized by Title 3A, Sections 709 and 710. The rules establish rates of compensation to retailers and the criteria for the selection of retailers. The rules also establish the circumstances under which lottery tickets may be returned and establish other criteria and actions relating to payment of prizes, minimum sales requirements, merchandising, invoicing, payments to the Lottery Commission and damage to equipment provided by the Lottery Commission.
CONTACT PERSON:
Rollo Redburn, Administrative Rules Liaison, (405) 522-7700, Oklahoma Lottery Commission, 3817 N. Santa Fe, Suite 175, Oklahoma City, OK 73118-8508; or, Terri Jackson, Administrative Assistant, (405) 522-7700, Oklahoma Lottery Commission, 3817 N. Santa Fe, Suite 175, Oklahoma City, OK 73118-8508.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

429:10-1-1. [RESERVED]

429:10-1-2. Definitions

In addition to terms defined in the Oklahoma Education Lottery Act, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Act" means the Oklahoma Education Lottery Act.

"Active Game" means a lottery game currently available for sale from the Oklahoma Lottery Commission.

"Activated Pack" means the status of a pack of tickets which indicates to the OLC that tickets are being sold from that pack.

"Altered Ticket" means any ticket intentionally changed by a player or by other persons or means in an attempt to make the ticket appear as a winning ticket.

"Authorized Location" means a business authorized by a contract with OLC to sell OLC Lottery products. **"Authorized Location"** and **"Authorized Retailer"** are synonymous terms.

"Automatic Win Symbol" means any symbol that, when revealed under the removable covering on an instant ticket, automatically wins a prize for the player.

"Breaks" means a gap of one or more numbered instant tickets in a pack number sequence.

"Cancelled Ticket" means any OLC ticket for which the ticket sale and/or validation information has been deleted from OLC records.

"Caption" means the letters appearing near the play symbols in the instant ticket play area that verify the correctness of play symbols.

"Certified Drawing" means a drawing in which the lottery and an independent accountant attests that the drawing

equipment functioned properly and that a random selection of a winning combination has occurred.

"Claim Center" means an OLC authorized location available to pay claims for prizes of more than $600. A "Claim Center" may also be a retailer authorized by the Board to pay prizes up to five thousand dollars ($5,000.00) without regard to where the ticket or share was purchased, after performing validation procedures appropriate to the game and as specified by the Board.

"Claim Form" means the printed form authorized by OLC that a player shall complete and submit to OLC along with a ticket to determine eligibility for prize payment, in the event that such prize has not been validated and paid by an OLC retailer.

"Claimant" means a player who has submitted a claim for prize payment.

"Claim Period" means the period of time prescribed by the Act during which players must claim cash prizes. For instant games, the claim period is ninety (90) days after the announced end of the game. For online games, the claim period is one hundred eighty (180) days after the drawing date.

"Computer Selected Items" means numbers or groups of numbers selected for a player by the computer in online games. Also known as auto picks, quick picks, or computer picks.

"Counterfeit Ticket" means any ticket not produced by an OLC authorized ticket printer or an OLC online games sales terminal.

"Defectively Printed Tickets" means the same as misregistered ticket.

"Display Printing" means the printing on the ticket not associated with the ticket game play.

"District Office" means an OLC claim center, if any, in various cities in Oklahoma.

"Disputed Ticket" means a ticket which the claimant believes is a prize winning ticket, but which fails OLC validation procedures.

"Doubler" means any method used on a ticket to double a prize amount.

"Draw Procedures" means the written document approved by OLC that specifies the process for selecting winners for a particular instant game or instant game promotion, if a drawing is designed as part of the game or promotion, and for each online game or online game promotion.

"Drawing" means the process by which the lottery randomly selects numbers or items in accordance with the specific game rules or game promotion rules for those games or game promotions requiring random selection of numbers or items.

"Duplicate Ticket" means a ticket produced by photograph, xerography or any other duplication method other than an authorized instant ticket printed for OLC or generated by an authorized online terminal.

"Electronic Funds Transfer" or **"EFT"** means the process by which the OLC transfers funds from a retailer authorized bank account to pay amounts due the OLC or by which OLC provides funds to a retailer for payment of prizes.

"Entry" means a lottery ticket or other OLC authorized document submitted to OLC or any OLC authorized party for participation in an OLC drawing.

"Executive Director" means the chief executive officer and administrator of the Oklahoma Lottery Commission.

"Finalist" means a person selected through a preliminary drawing for participation in a grand prize drawing.

"Floating Image Play Area" means the play area of each instant ticket which may print in a slightly different position on game tickets as a security measure.

"Game Board" means a pre-printed OLC form for use by players in selecting numbers for online games (see "Play Slip").

"Game Name" means the name of the Instant or Online game, as specified in the game procedures.

"Game Number" means the preprinted number on an instant ticket which identifies a particular game.

"Game Report" means a report prepared after a game end showing, at a minimum, the number of tickets sold and the number of prizes awarded in the game.

"Game Specifications Document" means the same as working papers.

"Grand Prize Drawing" means an event in which qualified players/contestants are awarded prizes in a random manner and as provided in OLC approved procedures.

"High-Tier Prize" means a prize of $601 or more.

"Instant Game" means an instant ticket lottery game offered by OLC for sale to the public that is played by revealing a hidden play area on a ticket to display the play symbols.

"Instant Game Procedures" means the document summarizing the game specifications as provided in the working papers for each Instant Game.

"Instant Game Promotion Procedures" means the OLC approved procedures for player participation in any Instant Game Promotion.

"Jackpot" means a large prize; often the top prize in an online game.

"Lottery Retailer" or **"Retailer"** means a business entity contracted to OLC to sell

lottery tickets.

"Low-Tier Prize" means a prize of twenty-five dollars ($25) or less.

"Mid-Tier Prize" means a prize of $25.01-$600.

"Minor" means an individual younger than 18 years of age.

"Miscut Ticket" means a ticket cut during production such that the ticket is not whole and able to be validated.

"Misregistered Ticket" means any ticket on which printed data has been misprinted in such a manner as to prevent reading during the validation process.

"Mutilated Ticket" means any lottery ticket accidentally or intentionally damaged such that completion of OLC validation procedures is not possible.

"Non-Cash Prize" means merchandise prizes offered in lottery games or lottery promotions.

"Oklahoma Lottery Retailer Contract" means Parts 1 through 8 of the Lottery Retailer Sales Contract Application, Title 3A, Section 701 ff of the Oklahoma Statutes as amended, Emergency and Permanent Rules approved by the OLC Board. As used in these Rules the terms, **"Retailer Contract," "Oklahoma Ticket Sales Contract," "Lottery Retail Sales**

Contract," and **"Lottery Retailer Sales Contract"** all mean **"Oklahoma Lottery Retailer Contract".**

"OLC" means the Oklahoma Lottery Commission.

"Online Game" means a game where tickets or shares are purchased through a network of sales terminals located at OLC authorized retail outlets through use of an OLC authorized play slip or manual retailer input of player requested numbers. "On-line Game" does not include a game played via the Internet.

"Online Game Procedures" means the document summarizing game specifications for each online game offered for sale by OLC.

"Online Game Promotion Procedures" means the document summarizing promotion specifications for each online game promotion offered by OLC.

"Online Terminal" means the OLC authorized sales terminal used to sell various online lottery number games.

"Pack" or **"Pack Size"** means a package of instant tickets, each ticket with a different number. The number of tickets in a pack is generally from 60 to 500.

"Pack Number" means the unique number on the ticket that designates each pack of instant tickets in the game. Each pack number is unique within each instant game.

"Play Area" means the covered area of an instant ticket that contains the ticket play symbols.

"Play Central ® Lottery Kiosk" means a self-service ticket vending machine that allows the player to purchase instant tickets and/or online game tickets without any clerk assistance.

"Play Panel" means an area on an online game play slip or game board used by a player to select numbers for a single online game play.

"Play Slip" means a pre-printed OLC form for use by players in selecting numbers for online games (see game board).

"Play Spot" means an authorized area on an instant ticket containing one play symbol and one caption.

"Play Station" means a stand-alone unit provided by OLC for the display of lottery game brochures play slips, etc.

"Play Style" means the method of play to determine a winner for an individual game or game promotion.

"Play Symbol" means the printed data under the removable covering on the front of an instant ticket that is used to determine eligibility for a prize. The symbols for individual games will be specified in individual instant game procedures.

"Player-Selected Item" means a number or item or group of numbers or items selected by a player in connection with an online game.

"Point of Sale Material" or **"POS"** means flyers, brochures, posters and signage used within/at lottery retail locations to identify the products and games available for sale, as well as to provide general information (i.e. odds, jackpot amounts, prize levels and beneficiaries). **"Point of Purchase Material"** or **"POP"** is synonymous with POS.

"Preliminary Drawing" means an event for the selection of contestants for a grand prize drawing.

"Price Point" means the retail selling price of an individual game ticket.

"Printer Omitted Tickets" means any tickets designated by OLC's instant ticket printer as having been omitted from the ticket order quantity for reasons stated by the ticket printer.

"Prize" means a cash amount or product (merchandise) that can be won in a lottery game or game promotion.

"Prize Drawing" means a method for determining game or game promotion winners, as defined in OLC procedures.

"Prize Structure" means the number, value, and odds of winning prizes for an individual game as approved by OLC in individual game procedures.

"Retailer" means a business which sells lottery tickets or shares on behalf of OLC pursuant to a retailer contract.

"Retailer Commission" means the amount of money paid to retailers for selling lottery products.

"Retailer Paid Prizes" means prizes which may be paid by retailers subject to OLC validation procedures.

"Retail Sales Price" means the OLC designated price OLC retailers must charge for a ticket when sold.

"Retailer Ticket Order Quantity" means the number of tickets or packs of tickets ordered by the retailer from OLC or its authorized distributor.

"Retailer Validation Code" means the code found under the covered area over the play symbols on the front of the instant ticket which the OLC retailer may use to verify and validate low-tier winners.

"Settled Pack" means the status of an activated pack of instant tickets when the OLC has invoiced the retailer based upon a pre-determined formula or schedule and the retailer has paid for the pack.

"Share" means any intangible evidence of participation in a lottery game.

"Ticket" means any tangible evidence issued by the lottery to provide participation in a lottery game or drawing authorized by the Act.

"Ticket Number" means the number on the ticket that refers to the ticket sequence within the pack.

"Ticket Order Quantity" means the number of tickets or packs of tickets ordered by OLC from the instant ticket printer.

"Unreadable Ticket" means any ticket on which any play data or other ticket validation information cannot be read as part of the prize validation procedure.

"**Validation Number"** means the unique data printed on a ticket that enables verification of the ticket as a valid winner.

"Validation Procedures" means the procedures utilized by OLC and/or its authorized vendors to determine if a claimed ticket is a valid winner.

"Valid Ticket" means a ticket which meets all OLC game specifications and OLC validation requirements.

"Variant" means a symbol used in conjunction with certain play styles and may include a symbol that serves as a "wild card" to complete a winning combination of play symbols.

"VIRN (Void If Removed Numbers)" means a series of numbers under the removable covering on an instant ticket to be used in the validation process.

"Wild" means a symbol or word, different from all the others in an instant game, used to complete a match on a winning ticket.

"Working Papers" means the written document approved by the OLC for instant game production that includes, among other things, the game name, the art work for the front and back of the ticket, how a prize is won, game prize structure, play style, ticket delivery schedule to OLC, and eligibility for a drawing, if any.

429:10-1-3. Retailer compensation

(a) Retailers will earn six-percent (6%) for each dollar of ticket sales plus three-quarters of one-percent (.75%) for each dollar of prizes $600.00 or less paid by the retailer.

(b) In the event OLC designates certain retailers to pay prizes of up to $5,000, pursuant to the Act and 429:10-1-7(b) (relating to payment of prizes), retailers so designated shall earn six-percent (6%) for each dollar of ticket sales plus three-quarters of one-percent (.75%) for each dollar of prizes $5,000 or less paid by the retailer.

429:10-1-4. Retailer selection criteria

In addition to the retailer selection criteria in the Act, OLC will consider the criteria enumerated herein:

(1) It is the intent of OLC that all retailers sell both instant and online (computerized or pick-you-own numbers) games, thus retailer selection criteria for retailers of instant tickets and retailers of online (computerized or pick-your-own numbers) games are identical.

(2) Retailer applicants shall, at the time of application, consent to the requirements of the Act and the requirements enumerated herein, which may be revised and/or amended by the OLC subject to Board approval and notification to retailers.

(3) Persons applying to become lottery retailers shall be charged a uniform application fee of $95. The OLC may designate a portion of this fee as a non-refundable application fee and the remaining portion to cover the retailer bonding requirements;

(4) All lottery retailer contracts may be renewable annually from the date of issuance at the discretion of the OLC, unless sooner canceled or terminated.

(5) It is the intent of OLC that contracting with supervised lenders [See 14A O.S., §3-501 (relating to supervised vendors)], pawnshops, payday lenders, deferred deposit lenders and businesses whose primary business is categorized as a check casher for the sale of OLC products is not in the best interest of OLC and the State, thus applications from such businesses to become an OLC retailer will not be accepted or approved by OLC.

429:10-1-5. Acceptance and return of instant lottery tickets

(a) All instant lottery tickets ordered by retailer and accepted from OLC or its authorized distributor are deemed to be purchased by retailer at the price established by OLC, less appropriate retailer commissions and/or OLC approved adjustments.

(b) Retailers will accept only complete ticket orders and will not be allowed to accept a part of the ticket order delivered to them.

(c) Retailers shall be responsible for lost, stolen, missing, damaged or destroyed active packs of instant tickets and will be charged the full price of the tickets minus any applicable commissions, unless the tickets are recovered by OLC. If a retailer notifies the OLC within 24 hours of any active pack of tickets becoming lost, stolen, missing, damaged or destroyed and files a police report, in instances when packs are stolen, and cooperates in the investigation by the OLC, the OLC may reduce the retailer's costs to $25.00 for each active pack.

(d) Retailers are responsible for lost, stolen, missing, damaged or destroyed inactive instant tickets. If a retailer notifies the OLC within 24 hours of any inactive pack of tickets becoming lost, stolen, missing, damaged or destroyed and files a police report, in instances when packs are stolen, and cooperates with OLC in the investigation by OLC, the OLC may waive any retailer cost for each inactive pack.

(e) The OLC will accept full inactive pack returns only as follows:

(1) after the official notification to retailers announcing an end of game, retailers shall have three (3) weeks after the official end date to return all full and inactivated packs of tickets to a lottery representative; or,

(2) within ten (10) days of termination, suspension, cancellation, revocation or non-renewal of the retailer's contract with the OLC.

(f) The OLC will accept partial pack returns only as follows:

(1) within three (3) weeks of the termination, suspension, cancellation, revocation or non-renewal of the retailer's contract with the OLC.

(2) within the specific time frames established by OLC as a part of an official game ending procedure.

(3) A maximum of four (4) breaks in ticket number sequence per pack will be allowed.

(4) The tickets must be returned to a designated OLC representative.

(g) The OLC will accept the return of all instant tickets damaged prior to delivery acceptance by the retailer. These tickets must be returned to a designated OLC representative within one week of receipt of the tickets. The OLC may, at their sole discretion, elect to accept the return of tickets damaged after delivery.

(h) Retailers shall keep sufficient inventory to support all sales between a two week delivery cycle. Retailers who frequently require emergency or special orders may be assessed a delivery charge at the discretion of the OLC.

429:10-1-6. Acceptance of online tickets

(a) Retailers shall agree that all online tickets cannot be cancelled once printed.

(b) Retailers shall utilize the online game sales confirmation screen or prompt to advise players of the cost of the player's ticket selection cost whenever the total cost exceeds $20.00; for each individual transaction, this player confirmation will occur prior to actual printing and sale of the tickets.

429:10-1-7. Payment of prizes

(a) During the retailer's normal business hours, retailers are required to pay prizes $600.00 or under. Retailers are encouraged to pay in cash, but they may pay mid-tier prizes ($25.01 to $600) with a business check or money order if this is disclosed in advance to the claimant. Consistent reported failure to pay prizes to claimants or the issuance of a non-sufficient funds (NSF) check to claimants may be sufficient grounds to suspend or terminate the retailer contract.

(b) OLC may authorize designated retailers to pay prizes up to five-thousand dollars ($5,000.00), without regard to where the ticket or share was purchased, after performing validation procedures appropriate to the game and as specified by the Board.

(c) Before attempting to validate a winning ticket, the retailer should instruct the claimant to write their name on the back of the ticket.

(d) Retailer must establish that the ticket is a winning ticket by using the OLC validation procedures/system. If the retailer does not receive the appropriate authorization to pay, the ticket should be returned to the claimant with instructions to file a claim with OLC.

(e) After validating and paying a winning instant game ticket, the retailer should deface the ticket in a manner sufficient to prevent subsequent attempts to claim the ticket prize amount.

(f) For prizes greater than $600, retailers will provide claimants with OLC claim forms, if available, or direct them to the OLC office, or the OLC website.

(g) A retailer shall not charge any player or claimant a fee for selling a ticket, validating a winning ticket, paying a winning ticket, verifying a non-winning ticket, providing a claim form, or for any other assistance not authorized by OLC.

(h) If a claimant of a winning ticket is less than 18 years of age, retailers must instruct the claimant that the Act prohibits prize payment to any person 18 year of age or under and return the ticket to the claimant.

429:10-1-8. Minimum sales requirement

(a) The OLC will establish minimum weekly instant and/or online sales requirements which will be communicated to retailers. Failure to achieve these minimum weekly sales levels may result in suspension or cancellation of the retailer's contract at the sole discretion of OLC.

(b) In order to promote and maintain the availability of lottery retailers in remote and/or sparsely populated areas of the state, OLC may waive these minimum sales requirements at OLC's sole discretion.

429:10-1-9. Merchandising

(a) Each retailer shall offer all available instant games for sale to the public.

(b) The retailer shall use ticket dispensers provided by OLC for the sale of lottery tickets, and shall place the dispenser and online game lottery sales terminal(s) in a prominent location in the retail establishment near the cash register or check-out area.

(c) The retailer shall prominently display point-of-sale materials supplied by the OLC, which may include door decals, game posters, display tickets, danglers, change mats, lighted interior signs, banners, odds of winning, or any other items provided by the OLC unless the OLC agrees otherwise in writing.

(d) Retailer must agree to make available to potential lottery customers player information supplied by OLC, to explain game rules, to provide adequate supplies of claim forms, game or game promotion entry envelopes, play selection slips, and to provide adequate space for a play station.

429:10-1-10. Settlement and retailer invoicing

(a) The accounting period for purposes of preparing retailer invoices shall be weekly from Sunday at 12:00 midnight through the following Sunday at 12:00 midnight.

(b) All packs of instant tickets activated in an accounting period and for which the prize validation requirements specified in (c) of this Section have occurred, and all sales of online game tickets occurring within the accounting period will be invoiced to the retailer, less any retailer commissions and/or OLC authorized adjustments. The retailer invoice will be available through the OLC lottery sales terminal after 5:00 a.m. on Monday, immediately following the end of the accounting period.

(c) For instant games, all ticket packs activated by the retailer or by the OLC on behalf of the retailer for which eighty percent (80%) of the winning low-tier tickets contained in the pack have been validated by the end of the previous accounting period will be included in the current retailer weekly invoice. Any pack which has been activated for a period of forty-five (45) days will be invoiced to the retailer, even if eighty percent (80%) of the pack's winning low-tier tickets have not been validated.

(d) The retailer invoice will provide a calculation of the proceeds due the OLC. The proceeds will be equal to the retail value of instant game ticket packs, plus the retail value of on-line ticket sales, less applicable sales or cashing commissions, less any winning tickets paid by the retailer during the accounting period, plus or minus any adjustments to the retailer account authorized by OLC.

(e) For purposes of calculating the retailer invoice, free ticket prizes validated by the retailer shall have the same value as the applicable retail value of free ticket(s) provided to the claimant.

429:10-1-11. Banking, deposits and payment requirements

(a) The Act requires each retailer to establish a separate bank account in an institution insured by the Federal Deposit Insurance Corporation (FDIC) and to provide the OLC with authorization to transfer lottery proceeds from this account using Electronic Funds Transfer (EFT). All funds due the OLC shall be considered State funds until paid to the OLC and are to be deposited into this separate bank account no later than the close of the next banking day after the date of their collection by the retailer.

(b) The OLC will provide notification of the amount of the accounting period EFT by way of an invoice to the retailer.

Lottery proceeds due the OLC, as calculated on the invoice for an accounting period, will be transferred from the retailer bank account to the OLC on the Tuesday morning following the accounting period. When the Monday immediately preceding a scheduled Tuesday EFT transfer is a legal holiday, the transfer will occur on Wednesday morning.

(c) On the EFT funds transfer day (Tuesday morning), if all net lottery proceeds as detailed on the retailer invoice are not in the separate retailer bank account and this results in a non-sufficient funds (NSF) sweep, the retailer will be deemed to be in default. OLC will immediately contact the retailer and:

(1) If it is a first NSF default, require the retailer to deposit the required funds into the EFT lottery account to enable a wire transfer to be completed that day. A $25.00 NSF fee will be charged as an adjustment to the retailer account.

(2) If a second NSF default occurs within a 6 month period, OLC may immediately suspend the retailer's terminal operation until the required funds are brought to OLC or received by an OLC representative. A $25.00 NSF fee will be charged as an adjustment to the retailer account.

(3) If a third NSF default occurs within the same 6 month period provided in paragraph 2 of this subsection, the OLC may terminate the retailer contract immediately and commence collection proceedings on all money due to OLC.

429:10-1-12. Damage to OLC provided equipment

(a) Retailers shall exercise due diligence in protecting OLC provided equipment from damage.

(b) Retailers shall report any damaged equipment to OLC or OLC's authorized representative as soon as practical.

(c) Failure to report damaged equipment in a timely manner or repeated instances of equipment damage may be cause for cancellation or suspension of the retailer's contract.

[OAR Docket #06-1033; filed 5-22-06]

TITLE 429. OKLAHOMA LOTTERY COMMISSION
CHAPTER 15. INSTANT GAMES

[OAR Docket #06-1034]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
429:15-1-1 [RESERVED]
429:15-1-2 Definitions [NEW]
429:15-1-3 Ticket Responsibility [NEW]
429:15-1-4 Sale of Instant Game Tickets [NEW]
429:15-1-5 Determination of Prize Winner [NEW]
429:15-1-6 Ticket Validation Requirements [NEW]
429:15-1-7 Disputed Ticket [NEW]
429:15-1-8 Game End Date or Game Promotion End Date and Prize Claim Period [NEW]
429:15-1-9 Governing Law [NEW]
429:15-1-10 Required Prize Withholding [NEW]
429:15-1-11 Game Report [NEW]
429:15-1-12 Grand Prize Drawing [NEW]
429:15-1-13 Instant Game Procedures [NEW]
429:15-1-14 Instant Game Promotion Procedures [NEW]
Appendix A. Instant Game Procedures [NEW]
Appendix B. Instant Game Promotion Procedures [NEW]
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429:15-1-5 Determination of Prize Winner [NEW]
429:15-1-6 Ticket Validation Requirements [NEW]
429:15-1-7 Disputed Ticket [NEW]
429:15-1-8 Game End Date or Game Promotion End Date and Prize Claim Period [NEW]
429:15-1-9 Governing Law [NEW]
429:15-1-10 Required Prize Withholding [NEW]
429:15-1-11 Game Report [NEW]
429:15-1-12 Grand Prize Drawing [NEW]
429:15-1-13 Instant Game Procedures [NEW]
429:15-1-14 Instant Game Promotion Procedures [NEW]
Appendix A. Instant Game Procedures [NEW]
Appendix B. Instant Game Promotion Procedures [NEW]
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ANALYSIS:
The rules establish rules for the conduct of instant ticket lottery games by the Lottery Commission as authorized by Title 3A, Sections 707, 709 and 710 of the Oklahoma Statutes. The rules discuss ticket responsibility, sale of the tickets, determination of prize winners and how to validate a ticket. The rules also describe what to do if disputes arise, when games will end and the deadline for cashing in tickets. The rules require customers to comply with governing law as well as rules and decisions of the Lottery Commission. The rules also establish that prizes are subject to certain withholdings and that certain reports will be prepared after the closing of a game. Grand prize drawing procedures are described, as are instant game procedures and instant game promotion procedures.
CONTACT PERSON:
Rollo Redburn, Administrative Rules Liaison, (405) 522-7700, Oklahoma Lottery Commission, 3817 N. Santa Fe, Suite 175, Oklahoma City, OK 73118-8508; or, Terri Jackson, Administrative Assistant, (405) 522-7700, Oklahoma Lottery Commission, 3817 N. Santa Fe, Suite 175, Oklahoma City, OK 73118-8508.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

429:15-1-1. [RESERVED]

429:15-1-2. Definitions

In addition to terms defined in the Oklahoma Education Lottery Act, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Act" means the Oklahoma Education Lottery Act.

"Active Game" means a lottery game currently available for sale from the Oklahoma Lottery Commission.

"Activated Pack" means the status of a pack of tickets which indicates to the OLC that tickets are being sold from that pack.

"Altered Ticket" means any ticket intentionally changed by a player or by other persons or means in an attempt to make the ticket appear as a winning ticket.

"Authorized Location" means a business authorized by a contract with OLC to sell OLC Lottery products. **"Authorized Location"** and **"Authorized Retailer"** are synonymous terms.

"Automatic Win Symbol" means any symbol that, when revealed under the removable covering on an instant ticket, automatically wins a prize for the player.

"Breaks" means a gap of one or more numbered instant tickets in a pack number sequence.

"Cancelled Ticket" means any OLC ticket for which the ticket sale and/or validation information has been deleted from OLC records.

"Caption" means the letters appearing near the play symbols in the instant ticket play area that verify the correctness of play symbols.

"Certified Drawing" means a drawing in which the lottery and an independent accountant attests that the drawing equipment functioned properly and that a random selection of a winning combination has occurred.

"Claim Center" means an OLC authorized location available to pay claims for prizes of more than $600. A "Claim Center" may also be a retailer authorized by the Board to pay prizes up to five thousand dollars ($5,000.00) without regard to where the ticket or share was purchased, after performing validation procedures appropriate to the game and as specified by the Board.

"Claim Form" means the printed form authorized by OLC that a player shall complete and submit to OLC along with a ticket to determine eligibility for prize payment, in the event that such prize has not been validated and paid by an OLC retailer.

"Claimant" means a player who has submitted a claim for prize payment.

"Claim Period" means the period of time prescribed by the Act during which players must claim cash prizes. For instant games, the claim period is ninety (90) days after the announced end of the game. For online games, the claim period is one hundred eighty (180) days after the drawing date.

"Computer Selected Items" means numbers or groups of numbers selected for a player by the computer in online games. Also known as auto picks, quick picks, or computer picks.

"Counterfeit Ticket" means any ticket not produced by an OLC authorized ticket printer or an OLC online games sales terminal.

"Defectively Printed Tickets" means the same as misregistered ticket.

"Display Printing" means the printing on the ticket not associated with the ticket game play.

"District Office" means an OLC claim center, if any, in various cities in Oklahoma.

"Disputed Ticket" means a ticket which the claimant believes is a prize winning ticket, but which fails OLC validation procedures.

"Doubler" means any method used on a ticket to double a prize amount.

"Draw Procedures" means the written document approved by OLC that specifies the process for selecting winners for a particular instant game or instant game promotion, if a drawing is designed as part of the game or promotion, and for each online game or online game promotion.

"Drawing" means the process by which the lottery randomly selects numbers or items in accordance with the specific game rules or game promotion rules for those games or game promotions requiring random selection of numbers or items.

"Duplicate Ticket" means a ticket produced by photograph, xerography or any other duplication method other than an authorized instant ticket printed for OLC or generated by an authorized online terminal.

"Electronic Funds Transfer" or **"EFT"** means the process by which the OLC transfers funds from a retailer authorized bank account to pay amounts due the OLC or by which OLC provides funds to a retailer for payment of prizes.

"Entry" means a lottery ticket or other OLC authorized document submitted to OLC or any OLC authorized party for participation in an OLC drawing.

"Executive Director" means the chief executive officer and administrator of the Oklahoma Lottery Commission.

"Finalist" means a person selected through a preliminary drawing for participation in a grand prize drawing.

"Floating Image Play Area" means the play area of each instant ticket which may print in a slightly different position on game tickets as a security measure.

"Game Board" means a pre-printed OLC form for use by players in selecting numbers for online games (see "Play Slip").

"Game Name" means the name of the Instant or Online game, as specified in the game procedures.

"Game Number" means the preprinted number on an instant ticket which identifies a particular game.

"Game Report" means a report prepared after a game end showing, at a minimum, the number of tickets sold and the number of prizes awarded in the game.

"Game Specifications Document" means the same as working papers.

"Grand Prize Drawing" means an event in which qualified players/contestants are awarded prizes in a random manner and as provided in OLC approved procedures.

"High-Tier Prize" means a prize of $601 or more.

"Instant Game" means an instant ticket lottery game offered by OLC for sale to the public that is played by revealing a hidden play area on a ticket to display the play symbols.

"Instant Game Procedures" means the document summarizing the game specifications as provided in the working papers for each Instant Game.

"Instant Game Promotion Procedures" means the OLC approved procedures for player participation in any Instant Game Promotion.

"Jackpot" means a large prize; often the top prize in an online game.

"Lottery Retailer" or **"Retailer"** means a business entity contracted to OLC to sell

lottery tickets.

"Low-Tier Prize" means a prize of twenty-five dollars ($25) or less.

"Mid-Tier Prize" means a prize of $25.01-$600.

"Minor" means an individual younger than 18 years of age.

"Miscut Ticket" means a ticket cut during production such that the ticket is not whole and able to be validated.

"Misregistered Ticket" means any ticket on which printed data has been misprinted in such a manner as to prevent reading during the validation process.

"Mutilated Ticket" means any lottery ticket accidentally or intentionally damaged such that completion of OLC validation procedures is not possible.

"Non-Cash Prize" means merchandise prizes offered in lottery games or lottery promotions.

"Oklahoma Lottery Retailer Contract" means Parts 1 through 8 of the Lottery Retailer Sales Contract Application, Title 3A, Section 701 ff of the Oklahoma Statutes as amended, Emergency and Permanent Rules approved by the OLC Board. As used in these Rules the terms, **"Retailer Contract,"** **"Oklahoma Ticket Sales Contract,"** **"Lottery Retail Sales Contract,"** and **"Lottery Retailer Sales Contract"** all mean **"Oklahoma Lottery Retailer Contract".**

"OLC" means the Oklahoma Lottery Commission.

"Online Game" means a game where tickets or shares are purchased through a network of sales terminals located at OLC authorized retail outlets through use of an OLC authorized play slip or manual retailer input of player requested numbers. "Online Game" does not include a game played via the Internet.

"Online Game Procedures" means the document summarizing game specifications for each online game offered for sale by OLC.

"Online Game Promotion Procedures" means the document summarizing promotion specifications for each online game promotion offered by OLC.

"Online Terminal" means the OLC authorized sales terminal used to sell various online lottery number games.

"Pack" or **"Pack Size"** means a package of instant tickets, each ticket with a different number. The number of tickets in a pack is generally from 60 to 500.

"Pack Number" means the unique number on the ticket that designates each pack of instant tickets in the game. Each pack number is unique within each instant game.

"Play Area" means the covered area of an instant ticket that contains the ticket play symbols.

"Play Central ? Lottery Kiosk" means a self-service ticket vending machine that allows the player to purchase instant tickets and/or online game tickets without any clerk assistance.

"Play Panel" means an area on an online game play slip or game board used by a player to select numbers for a single online game play.

"Play Slip" means a pre-printed OLC form for use by players in selecting numbers for online games (see game board).

"Play Spot" means an authorized area on an instant ticket containing one play symbol and one caption.

"Play Station" means a stand-alone unit provided by OLC for the display of lottery game brochures play slips, etc.

"Play Style" means the method of play to determine a winner for an individual game or game promotion.

"Play Symbol" means the printed data under the removable covering on the front of an instant ticket that is used to determine eligibility for a prize. The symbols for individual games will be specified in individual instant game procedures.

"Player-Selected Item" means a number or item or group of numbers or items selected by a player in connection with an online game.

"Point of Sale Material" or **"POS"** means flyers, brochures, posters and signage used within/at lottery retail locations to identify the products and games available for sale, as well as to provide general information (i.e. odds, jackpot amounts, prize levels and beneficiaries). **"Point of Purchase Material"** or **"POP"** is synonymous with POS.

"Preliminary Drawing" means an event for the selection of contestants for a grand prize drawing.

"Price Point" means the retail selling price of an individual game ticket.

"Printer Omitted Tickets" means any tickets designated by OLC's instant ticket printer as having been omitted from the ticket order quantity for reasons stated by the ticket printer.

"Prize" means a cash amount or product (merchandise) that can be won in a lottery game or game promotion.

"Prize Drawing" means a method for determining game or game promotion winners, as defined in OLC procedures.

"Prize Structure" means the number, value, and odds of winning prizes for an individual game as approved by OLC in individual game procedures.

"Retailer" means a business which sells lottery tickets or shares on behalf of OLC pursuant to a retailer contract.

"Retailer Commission" means the amount of money paid to retailers for selling lottery products.

"Retailer Paid Prizes" means prizes which may be paid by retailers subject to OLC validation procedures.

"Retail Sales Price" means the OLC designated price OLC retailers must charge for a ticket when sold.

"Retailer Ticket Order Quantity" means the number of tickets or packs of tickets ordered by the retailer from OLC or its authorized distributor.

"Retailer Validation Code" means the code found under the covered area over the play symbols on the front of the instant ticket which the OLC retailer may use to verify and validate low-tier winners.

"Settled Pack" means the status of an activated pack of instant tickets when the OLC has invoiced the retailer based upon a pre-determined formula or schedule and the retailer has paid for the pack.

"Share" means any intangible evidence of participation in a lottery game.

"Ticket" means any tangible evidence issued by the lottery to provide participation in a lottery game or drawing authorized by the Act.

"Ticket Number" means the number on the ticket that refers to the ticket sequence within the pack.

"Ticket Order Quantity" means the number of tickets or packs of tickets ordered by OLC from the instant ticket printer.

"Unreadable Ticket" means any ticket on which any play data or other ticket validation information cannot be read as part of the prize validation procedure.

"Validation Number" means the unique data printed on a ticket that enables verification of the ticket as a valid winner.

"Validation Procedures" means the procedures utilized by OLC and/or its authorized vendors to determine if a claimed ticket is a valid winner.

"Valid Ticket" means a ticket which meets all OLC game specifications and OLC validation requirements.

"Variant" means a symbol used in conjunction with certain play styles and may include a symbol that serves as a "wild card" to complete a winning combination of play symbols.

"VIRN (Void If Removed Numbers)" means a series of numbers under the removable covering on an instant ticket to be used in the validation process.

"Wild" means a symbol or word, different from all the others in an instant game, used to complete a match on a winning ticket.

"Working Papers" means the written document approved by the OLC for instant game production that includes, among other things, the game name, the art work for the front and back of the ticket, how a prize is won, game prize structure, play style, ticket delivery schedule to OLC, and eligibility for a drawing, if any.

429:15-1-3. Ticket responsibility

(a) A ticket is a bearer instrument until signed on the back by the ticket holder.

(b) The OLC will not be responsible for lost, stolen, or destroyed tickets.

(c) The OLC will not be responsible for mutilated, altered, unreadable tickets or tickets tampered with in any manner.

(d) The OLC will not be responsible for tickets claimed by a player in error for a lower prize at a retailer.

(e) The OLC may not pay prizes to any claimant who purchases a ticket from an unauthorized retailer or unauthorized person.

429:15-1-4. Sale of instant game tickets

(a) Only retailers who have a current contract with OLC are authorized to sell Instant Game tickets and tickets may be sold only at the authorized location.

(b) Each Instant Game ticket shall be sold for the retail sales price authorized by OLC and stated in the Instant Game Procedures.

429:15-1-5. Determination of prize winner

(a) The play symbols shall be used by a player to determine eligibility for instant game prizes. (b) A player's eligibility to win a prize is subject to OLC ticket validation requirements.

(c) For each individual game, the player shall uncover the play area on the front of the ticket to reveal the play symbols. Eligibility to win a prize is based on the approved play style provided in the OLC Instant Game Procedures, and which may include:

(1) Match Three. If three identical play symbols are revealed on the ticket, the player shall win the prize indicated.

(2) Match Three with Specific Match Variant. The player shall win the prize indicated in either of the following ways:

(A) The player matches three identical play symbols; or

(B) The player matches two identical play symbols and the variant as specified in the Instant Game Procedures.

(3) Three Match Three. If three identical play symbols or numbers are revealed across one of the three lines, the player shall win the prize indicated.

(4) Add Up. If the player adds up all of the play numbers printed on the ticket and the amount is greater than or equal to the required total amount printed on the ticket, the player shall win the prize indicated.

(5) Three in Line. If the player finds three identical play symbols, either diagonally, vertically, or horizontally, on the same ticket, the player shall win the prize indicated.

(6) Key Number Match. If the player finds a play number or symbol that matches the designated key number play numbers or symbols, the player shall win the prize indicated.

(7) Your Number(s) Beat Their Number(s). If the player finds a play number(s) designated as "yours" that is greater than the play number(s) designated as "theirs," the player shall win the prize indicated.

(8) Three Consecutive Numbers or Symbols in Sequence. If the player finds three play numbers or symbols in a specified consecutive order among the play numbers or symbols, the player shall win the prize indicated.

(9) Doubler. If the player finds a play symbol designated as a doubler, the player prize won shall double in amount.
(10) Any other play style developed by OLC.

429:15-1-6. Ticket validation requirements

(a) Each Instant Game ticket shall be validated according to OLC validation procedures prior to payment of a prize.
(b) An Instant Game ticket shall comply with all of the following:
(1) The ticket shall not be stolen or appear on any list of printer omitted tickets on file with the OLC;
(2) The ticket shall not be counterfeit or forged, in whole or in part;
(3) The ticket shall not be mutilated, altered, or unreadable;
(4) The ticket shall have been issued by the OLC in an authorized manner;
(5) The ticket shall pass the confidential OLC validation and security tests appropriate to the applicable play style;
(6) The validation number of an apparent winning ticket shall appear on the OLC's official file of validation numbers of winning tickets. A ticket with that validation number shall not have been paid previously;
(7) The ticket shall be intact, and not miscut, and have exactly one play symbol and exactly one caption in each of the play spots, exactly one pack number, exactly one ticket number, exactly one retailer validation code, and exactly one validation number on the ticket;
(8) The game, pack, ticket, and validation numbers must be present in their entirety and be fully legible. The validation numbers shall correspond, using the OLC's files, to the play symbols on the ticket;
(9) The play symbols, captions, validation number, retailer validation code, pack number, and ticket number must be right side up and not reversed in any manner;
(10) The ticket must not be blank or partially blank, misregistered, defective, or printed or produced in error;
(11) Each of the play symbols must be exactly one of those described in the Instant Games Procedures, and each of the captions must be exactly one of those described in the Instant Games Procedures;
(12) Each of the play symbols on the ticket must be printed in the correct symbol font and correspond precisely to the artwork on file at the OLC. Each of the captions must be printed in the caption font and must correspond precisely to the artwork on file at the OLC. The retailer validation code must be printed in the retailer validation code font and must correspond precisely to the artwork on file at the OLC. The validation number must be printed in the validation number font and must correspond precisely to the artwork on file at the OLC;
(13) The display printing must be regular in every respect and correspond precisely with the artwork on file at the OLC.
(c) Any ticket not passing all of the validation tests and requirements is void and ineligible for any prize and shall not be paid. The OLC may, in its sole discretion, reimburse the player for the cost of the void ticket. This shall be the claimant's only remedy.
(d) If a defective ticket is purchased by a player, the only OLC liability shall be reimbursement for the cost of the defective ticket.

429:15-1-7. Disputed ticket

If a dispute arises between the OLC and a ticket claimant concerning whether the ticket is a winning ticket and if the ticket prize has not been paid, the OLC may, exclusively at OLC's determination, reimburse the claimant for the cost of the disputed ticket. This shall be the claimant's only remedy.

429:15-1-8. Game end date or game promotion end date and prize claim period

(a) The OLC, at any time, may announce the game end date for an individual game or game promotion.
(b) No tickets shall be sold past the game end date.
(c) Instant Game prizes shall be claimed no later than 90 days after the game end date of the individual game.
(d) Instant Game Promotion end dates and related promotion entry dates will be provided in the Instant Game Promotion Procedures for each Instant Game Promotion.

429:15-1-9. Governing law

In purchasing a ticket, the customer agrees to comply with, and abide by, the Act, and all rules and final decisions of the OLC, and all procedures and instructions established by the OLC for the conduct of the game or game promotion.

429:15-1-10. Required prize withholding

All prizes are subject to applicable federal tax withholdings, state income tax, and other required state withholdings, or delinquent state debt.

429:15-1-11. Game report

Following the time period in which prizes may be claimed after termination of a game, the OLC shall prepare a report that shows, at a minimum, the total number of tickets sold and the number of prizes awarded in the game.

429:15-1-12. Grand prize drawing

(a) This section shall apply to individual games that provide for a grand prize drawing, if any.
(b) Game drawing procedures shall be provided to retailers and the public.
(c) Eligibility for a grand prize drawing shall be determined by, but not limited to, a direct entry to a grand prize drawing or an entry into a preliminary draw as provided in Instant Game Procedures or Instant Game Promotion procedures. The OLC shall determine any prizes to be awarded and the method of payment which shall be stated in the Instant Game Procedures or Instant Game Promotion Procedures.

(d) Preliminary draws and grand prize drawings shall be conducted at times and places and pursuant to the methods stated in the OLC Instant Game Procedures or Instant Game Promotion Procedures.
(e) An entry to a preliminary or grand prize drawing submitted by a player in accordance with the applicable procedures is eligible to be included in a drawing.
(f) Entries to a preliminary or grand prize drawing shall be delivered to the address or location designated by OLC no later than the last day of the time frame specified.
(g) The number of preliminary draw and grand prize drawing winners selected to advance or to win a prize shall be specified. The odds of winning an entry into these drawings for a prize of a specific amount need not be uniform throughout the game and are subject to change by the OLC, depending on the number of entries received.
(h) Each grand prize drawing finalist shall submit a completed claim form and the ticket, if appropriate, to the OLC within the required claim filing period. Failure to submit these items within the claim filing period and failure to have a valid ticket will be cause for ineligibility to the grand prize drawing.
(i) Each grand prize drawing finalist will be notified by the OLC of the date of his/her appearance, if any, at the grand prize drawing.
(j) If a dispute arises between the OLC and a ticket claimant concerning whether the ticket is a winning ticket and if the ticket prize has not been paid, the OLC may, at its sole discretion, reimburse the claimant for the cost of the disputed ticket. This shall be the claimant's exclusive remedy.

429:15-1-13. Instant Game Procedures

(a) The OLC shall make available to retailers and the public Instant Game Procedures for each Instant Game prior to it being introduced for sale to the public.
(b) The Instant Game Procedures for each game shall contain, at a minimum, the following:
(1) game number;
(2) game name;
(3) retail sales price;
(4) play style;
(5) pack size;
(6) play symbols
(7) captions or play symbol captions;
(8) number and value of prizes;
(9) retailer paid prizes;
(10) prize drawings, if any.
(c) The play style for an individual game shall be fully described in the Instant Game Procedures and may take the form of one or more of the following methods of play:
(1) Match Three - like amounts or symbols;
(2) Match Three with Specific Match Variant;
(3) Three Match Three;
(4) Add Up;
(5) Three In Line;
(6) Key Number Match;
(7) Your Number(s) Beats Their Number(s);
(8) Three Consecutive Numbers or Symbols in Sequence;
(9) Doubler; or
(10) Any other play style developed by OLC.
(d) Instant game procedures will follow the format provided as an example only in Appendix A.

429:15-1-14. Instant Game Promotion Procedures

(a) OLC shall make available to retailers and the public specifics for each Instant Game Promotion prior to the promotion being introduced to the public for participation.
(b) The Instant Game Promotion Procedures shall contain, at a minimum, the following:
(1) Game promotion name;
(2) Retail sales price, if any;
(3) Play style;
(4) Odds;
(5) Prize levels;
(6) Method of player entry;
(7) Prize drawings or winner selection method; and
(8) Deadline for player entry.
(c) Instant Game Promotion Procedures will follow the format provided as an example only in Appendix B.

APPENDIX A. INSTANT GAME PROCEDURES [NEW]

The following information is provided as an example only.

Oklahoma Lottery Commission

INSTANT GAME PROCEDURES
INSTANT GAME NO. 01 "GAME NAME"

Date

1. **Instant Game Number:**
2. **Game Name:**
3. **Retail Sales Price:**
4. **Overall Odds:**
5. **Play Style:**
6. **Pack Size:**
7. **Play Symbols:**
8. **Captions or Play Symbol Captions:**

PLAY SYMBOL	CAPTION

9. **Prize Levels:**

Prize Levels

10. **Retailer Paid Prizes:**
11. **Prize Drawings (if any):**

Approved

_____ _____

James R. Scroggins
EXECUTIVE DIRECTOR

Date

APPENDIX B. INSTANT GAME PROMOTION PROCEDURES [NEW]

The following information is provided as an example only.

Oklahoma Lottery Commission

INSTANT GAME PROMOTION PROCEDURES
INSTANT GAME NO. 01 "GAME NAME"

Date

1. **Game Promotion Name:**
2. **Retail Sales Price, if any:**
3. **Play Style:**
4. **Odds:**
5. **Prize Levels:**
6. **Method of Player Entry:**
7. **Prize drawings or winner selection method:**
8. **Deadline for player entry:**

Approved

_____ _____

James R. Scroggins
EXECUTIVE DIRECTOR

Date

[OAR Docket #06-1034; filed 5-22-06]

TITLE 429. OKLAHOMA LOTTERY COMMISSION
CHAPTER 20. ONLINE GAMES

[OAR Docket #06-1035]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
429:20-1-1 [RESERVED]
429:20-1-2 Definitions [NEW]
429:20-1-3 Ticket Responsibility [NEW]
429:20-1-4 Sale of Online Game Tickets [NEW]
429:20-1-5 Determination of Prize Winner [NEW]
429:20-1-6 Ticket Validation Requirements [NEW]
429:20-1-7 Disputed Ticket [NEW]
429:20-1-8 Game End Date or Game Promotion End Date and Prize Claim Period [NEW]
429:20-1-9 Draw Procedures [NEW]
429:20-1-10 Governing Law [NEW]
429:20-1-11 Prize Withholdings [NEW]
429:20-1-12 Game Report [NEW]
429:20-1-13 Prize Amounts for Online Games [NEW]
429:20-1-14 Game Sell-Out Prohibited [NEW]
429:20-1-15 Entry of Plays [NEW]
429:20-1-16 Online Game Procedures [NEW]
429:20-1-17 Online Game Promotion Procedures [NEW]
Appendix A. Online Game Procedures [NEW]
Appendix B. Online Game Promotion Procedures [NEW]
AUTHORITY:
Oklahoma Lottery Commission, Board of Trustees, 3A O.S., Sections 707, 709 and 710
DATES:
Comment Period:
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429:20-1-1 [RESERVED]
429:20-1-2 Definitions [NEW]
429:20-1-3 Ticket Responsibility [NEW]
429:20-1-4 Sale of Online Game Tickets [NEW]
429:20-1-5 Determination of Prize Winner [NEW]
429:20-1-6 Ticket Validation Requirements [NEW]
429:20-1-7 Disputed Ticket [NEW]
429:20-1-8 Game End Date or Game Promotion End Date and Prize Claim Period [NEW]
429:20-1-9 Draw Procedures [NEW]
429:20-1-10 Governing Law [NEW]
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429:20-1-15 Entry of Plays [NEW]
429:20-1-16 Online Game Procedures [NEW]
429:20-1-17 Online Game Promotion Procedures [NEW]
Appendix A. Online Game Procedures [NEW]
Appendix B. Online Game Promotion Procedures [NEW]
Gubernatorial approval:
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23 Ok Reg 188
Docket number:
05-1282
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The rules establish rules for the conduct of online lottery games by the Lottery Commission as authorized by Title 3A, Sections 707, 709 and 710 of the Oklahoma Statutes. The rules discuss ticket responsibility, sale of the tickets, determination of prize winners and how to validate a ticket. The rules also describe what to do if disputes arise, when games will end and the deadline for cashing in tickets. The rules require customers to comply with governing law as well as rules and decisions of the Lottery Commission. The rules also establish that prizes are subject to certain withholdings and that certain reports will be prepared after the closing of a game. Criteria relating to prize amounts are established and the sell-out of tickets that would guarantee a win is prohibited. Only official playslips and lottery terminals may be used, and other devices are prohibited from being connected to lottery terminals. Online game procedures and online game promotion procedures are to be defined in Lottery Commission approved and secure procedure documents and those procedures are also discussed.
CONTACT PERSON:
Rollo Redburn, Administrative Rules Liaison, (405) 522-7700, Oklahoma Lottery Commission, 3817 N. Santa Fe, Suite 175, Oklahoma City, OK 73118-8508; or, Terri Jackson, Administrative Assistant, (405) 522-7700, Oklahoma Lottery Commission, 3817 N. Santa Fe, Suite 175, Oklahoma City, OK 73118-8508.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

429:20-1-1. **[<INSERT>RESERVED</INSERT>]**

429:20-1-2. Definitions

In addition to terms defined in the Oklahoma Education Lottery Act, the following words or terms, when used in this Chapter, shall have the following meaning unless the context clearly indicates otherwise:

"Act" means the Oklahoma Education Lottery Act.

"Active Game" means a lottery game currently available for sale from the Oklahoma Lottery Commission.

"Activated Pack" means the status of a pack of tickets which indicates to the OLC that tickets are being sold from that pack.

"Altered Ticket" means any ticket intentionally changed by a player or by other persons or means in an attempt to make the ticket appear as a winning ticket.

"Authorized Location" means a business authorized by a contract with OLC to sell OLC Lottery products. **"Authorized Location"** and **"Authorized Retailer"** are synonymous terms.

"Automatic Win Symbol" means any symbol that, when revealed under the removable covering on an instant ticket, automatically wins a prize for the player.

"Breaks" means a gap of one or more numbered instant tickets in a pack number sequence.

"Cancelled Ticket" means any OLC ticket for which the ticket sale and/or validation information has been deleted from OLC records.

"Caption" means the letters appearing near the play symbols in the instant ticket play area that verify the correctness of play symbols.

"Certified Drawing" means a drawing in which the lottery and an independent accountant attests that the drawing equipment functioned properly and that a random selection of a winning combination has occurred.

"Claim Center" means an OLC authorized location available to pay claims for prizes of more than $600. A "Claim Center" may also be a retailer authorized by the Board to pay prizes up to five thousand dollars ($5,000.00) without regard to where the ticket or share was purchased, after performing validation procedures appropriate to the game and as specified by the Board.

"Claim Form" means the printed form authorized by OLC that a player shall complete and submit to OLC along with a ticket to determine eligibility for prize payment, in the event that such prize has not been validated and paid by an OLC retailer.

"Claimant" means a player who has submitted a claim for prize payment.

"Claim Period" means the period of time prescribed by the Act during which players must claim cash prizes. For instant games, the claim period is ninety (90) days after the announced end of the game. For online games, the claim period is one hundred eighty (180) days after the drawing date.

"Computer Selected Items" means numbers or groups of numbers selected for a player by the computer in online games. Also known as auto picks, quick picks, or computer picks.

"Counterfeit Ticket" means any ticket not produced by an OLC authorized ticket printer or an OLC online games sales terminal.

"Defectively Printed Tickets" means the same as misregistered ticket.

"Display Printing" means the printing on the ticket not associated with the ticket game play.

"District Office" means an OLC claim center, if any, in various cities in Oklahoma.

"Disputed Ticket" means a ticket which the claimant believes is a prize winning ticket, but which fails OLC validation procedures.

"Doubler" means any method used on a ticket to double a prize amount.

"Draw Procedures" means the written document approved by OLC that specifies the process for selecting winners for a particular instant game or instant game promotion, if a drawing is designed as part of the game or promotion, and for each online game or online game promotion.

"Drawing" means the process by which the lottery randomly selects numbers or items in accordance with the specific game rules or game promotion rules for those games or game promotions requiring random selection of numbers or items.

"Duplicate Ticket" means a ticket produced by photograph, xerography or any other duplication method other than an authorized instant ticket printed for OLC or generated by an authorized online terminal.

"Electronic Funds Transfer" or **"EFT"** means the process by which the OLC transfers funds from a retailer authorized bank account to pay amounts due the OLC or by which OLC provides funds to a retailer for payment of prizes.

"Entry" means a lottery ticket or other OLC authorized document submitted to OLC or any OLC authorized party for participation in an OLC drawing.

"Executive Director" means the chief executive officer and administrator of the Oklahoma Lottery Commission.

"Finalist" means a person selected through a preliminary drawing for participation in a grand prize drawing.

"Floating Image Play Area" means the play area of each instant ticket which may print in a slightly different position on game tickets as a security measure.

"Game Board" means a pre-printed OLC form for use by players in selecting numbers for online games (see "Play Slip").

"Game Name" means the name of the Instant or Online game, as specified in the game procedures.

"Game Number" means the preprinted number on an instant ticket which identifies a particular game.

"Game Report" means a report prepared after a game end showing, at a minimum, the number of tickets sold and the number of prizes awarded in the game.

"Game Specifications Document" means the same as working papers.

"Grand Prize Drawing" means an event in which qualified players/contestants are awarded prizes in a random manner and as provided in OLC approved procedures.

"High-Tier Prize" means a prize of $601 or more.

"Instant Game" means an instant ticket lottery game offered by OLC for sale to the public that is played by revealing a hidden play area on a ticket to display the play symbols.

"Instant Game Procedures" means the document summarizing the game specifications as provided in the working papers for each Instant Game.

"Instant Game Promotion Procedures" means the OLC approved procedures for player participation in any Instant Game Promotion.

"Jackpot" means a large prize; often the top prize in an online game.

"Lottery Retailer" or **"Retailer"** means a business entity contracted to OLC to sell

lottery tickets.

"Low-Tier Prize" means a prize of twenty-five dollars ($25) or less.

"Mid-Tier Prize" means a prize of $25.01-$600.

"Minor" means an individual younger than 18 years of age.

"Miscut Ticket" means a ticket cut during production such that the ticket is not whole and able to be validated.

"Misregistered Ticket" means any ticket on which printed data has been misprinted in such a manner as to prevent reading during the validation process.

"Mutilated Ticket" means any lottery ticket accidentally or intentionally damaged such that completion of OLC validation procedures is not possible.

"Non-Cash Prize" means merchandise prizes offered in lottery games or lottery promotions.

"Oklahoma Lottery Retailer Contract" means Parts 1 through 8 of the Lottery Retailer Sales Contract Application, Title 3A, Section 701 ff of the Oklahoma Statutes as amended, Emergency and Permanent Rules approved by the OLC Board. As used in these Rules the terms, **"Retailer Contract,"** **"Oklahoma Ticket Sales Contract,"** **"Lottery Retail Sales Contract,"** and **"Lottery Retailer Sales Contract"** all mean **"Oklahoma Lottery Retailer Contract".**

"OLC" means the Oklahoma Lottery Commission.

"Online Game" means a game where tickets or shares are purchased through a network of sales terminals located at OLC authorized retail outlets through use of an OLC authorized play slip or manual retailer input of player requested numbers. **"Online Game"** does not include a game played via the Internet.

"Online Game Procedures" means the document summarizing game specifications for each online game offered for sale by OLC.

"Online Game Promotion Procedures" means the document summarizing promotion specifications for each online game promotion offered by OLC.

"Online Terminal" means the OLC authorized sales terminal used to sell various online lottery number games.

"Pack" or **"Pack Size"** means a package of instant tickets, each ticket with a different number. The number of tickets in a pack is generally from 60 to 500.

"Pack Number" means the unique number on the ticket that designates each pack of instant tickets in the game. Each pack number is unique within each instant game.

"Play Area" means the covered area of an instant ticket that contains the ticket play symbols.

"Play Central ? Lottery Kiosk" means a self-service ticket vending machine that allows the player to purchase instant tickets and/or online game tickets without any clerk assistance.

"Play Panel" means an area on an online game play slip or game board used by a player to select numbers for a single online game play.

"Play Slip" means a pre-printed OLC form for use by players in selecting numbers for online games (see game board).

"Play Spot" means an authorized area on an instant ticket containing one play symbol and one caption.

"Play Station" means a stand-alone unit provided by OLC for the display of lottery game brochures play slips, etc.

"Play Style" means the method of play to determine a winner for an individual game or game promotion.

"Play Symbol" means the printed data under the removable covering on the front of an instant ticket that is used to determine eligibility for a prize. The symbols for individual games will be specified in individual instant game procedures.

"Player-Selected Item" means a number or item or group of numbers or items selected by a player in connection with an online game.

"Point of Sale Material" or **"POS"** means flyers, brochures, posters and signage used within/at lottery retail locations to identify the products and games available for sale, as well as to provide general information (i.e. odds, jackpot amounts, prize levels and beneficiaries).

"Point of Purchase Material" or **"POP"** is synonymous with POS.

"Preliminary Drawing" means an event for the selection of contestants for a grand prize drawing.

"Price Point" means the retail selling price of an individual game ticket.

"Printer Omitted Tickets" means any tickets designated by OLC's instant ticket printer as having been omitted from the ticket order quantity for reasons stated by the ticket printer.

"Prize" means a cash amount or product (merchandise) that can be won in a lottery game or game promotion.

"Prize Drawing" means a method for determining game or game promotion winners, as defined in OLC procedures.

"Prize Structure" means the number, value, and odds of winning prizes for an individual game as approved by OLC in individual game procedures.

"Retailer" means a business which sells lottery tickets or shares on behalf of OLC pursuant to a retailer contract.

"Retailer Commission" means the amount of money paid to retailers for selling lottery products.

"Retailer Paid Prizes" means prizes which may be paid by retailers subject to OLC validation procedures.

"Retail Sales Price" means the OLC designated price OLC retailers must charge for a ticket when sold.

"Retailer Ticket Order Quantity" means the number of tickets or packs of tickets ordered by the retailer from OLC or its authorized distributor.

"Retailer Validation Code" means the code found under the covered area over the play symbols on the front of the instant ticket which the OLC retailer may use to verify and validate low-tier winners.

"Settled Pack" means the status of an activated pack of instant tickets when the OLC has invoiced the retailer based upon a pre-determined formula or schedule and the retailer has paid for the pack.

"Share" means any intangible evidence of participation in a lottery game.

"Ticket" means any tangible evidence issued by the lottery to provide participation in a lottery game or drawing authorized by the Act.

"Ticket Number" means the number on the ticket that refers to the ticket sequence within the pack.

"Ticket Order Quantity" means the number of tickets or packs of tickets ordered by OLC from the instant ticket printer.

"Unreadable Ticket" means any ticket on which any play data or other ticket validation information cannot be read as part of the prize validation procedure.

"**Validation Number"** means the unique data printed on a ticket that enables verification of the ticket as a valid winner.

"Validation Procedures" means the procedures utilized by OLC and/or its authorized vendors to determine if a claimed ticket is a valid winner.

"Valid Ticket" means a ticket which meets all OLC game specifications and OLC validation requirements.

"Variant" means a symbol used in conjunction with certain play styles and may include a symbol that serves as a "wild card" to complete a winning combination of play symbols.

"VIRN (Void If Removed Numbers)" means a series of numbers under the removable covering on an instant ticket to be used in the validation process.

"Wild" means a symbol or word, different from all the others in an instant game, used to complete a match on a winning ticket.

"Working Papers" means the written document approved by the OLC for instant game production that includes, among other things, the game name, the art work for the front and back of the ticket, how a prize is won, game prize structure, play style, ticket delivery schedule to OLC, and eligibility for a drawing, if any.

429:20-1-3. Ticket responsibility

(a) A ticket is a bearer instrument until signed on the back by the ticket holder.

(b) The OLC will not be responsible for lost, stolen, or destroyed tickets.

(c) The OLC will not be responsible for mutilated, altered, unreadable tickets, or tickets tampered with in any manner.

(d) The OLC will not be responsible for tickets claimed by a player in error for a lower prize at a retailer.

(e) The OLC may not pay prizes to any claimant who purchases a ticket from an unauthorized retailer or unauthorized person.

429:20-1-4. Sale of Online Game tickets

(a) Only retailers who have a current contract with OLC are authorized to sell Online Game tickets, and tickets may be sold only at the authorized location.

(b) Each Online Game ticket shall be sold for the retail sales price authorized by OLC and stated in the Online Game Procedures.

429:20-1-5. Determination of prize winner

(a) The numbers appearing on an Online ticket shall be used by the player to determine eligibility for Online Game prizes.

(b) A player's eligibility to win a prize is subject to the OLC ticket validation requirements.

(c) Eligibility to win a prize is based on the approved play style provided in the Online Game Procedures.

(d) An online game play may only be claimed for the highest prize category won.

(e) For purposes of calculation of any prize to be paid in any Online game, the winning prize amount shall be rounded down to the nearest dollar.

429:20-1-6. Ticket validation requirements

(a) Each Online game ticket shall be validated according to OLC validation procedures prior to payment of a prize.

(b) An Online game ticket shall comply with all of the following:

(1) The ticket validation number shall be present in its entirety and shall correspond to the prize validation file and with the data printed on the ticket;

(2) The ticket shall not be mutilated, altered, unreadable, or tampered with in any manner;

(3) The ticket shall not be counterfeit or a duplicate of another winning ticket;

(4) The ticket shall have been issued by the lottery through an authorized Online game sales terminal in an authorized manner;

(5) The ticket shall be validated in accordance with confidential OLC procedures for claiming, validating and payment of prizes;

(6) The ticket shall have been recorded in the OLC central computer system or recording media before the drawing and the ticket shall match this OLC record in every aspect;

(7) The validation number data and the drawing date of an apparent winning ticket shall appear on the official file of winning tickets and a single play grid with the exact data and the ticket may not have been previously paid;

(8) The ticket may not be misregistered or defectively printed to an extent that it cannot be validated by the lottery;

(9) The ticket shall pass all other confidential security tests of OLC.

(c) Any ticket not passing all of the validation tests and requirements is void and ineligible for any prize and shall not be paid. The OLC may, in its sole discretion, reimburse the player for the cost of the void ticket. This shall be the claimant's only remedy.

(d) If a defective ticket is purchased by a player, the only OLC liability shall be reimbursement for the cost of the defective ticket.

429:20-1-7. Disputed ticket

If a dispute arises between OLC and a ticket claimant concerning whether the ticket is a winning ticket and if the ticket prize has not been paid, the OLC may, exclusively at OLC's determination, reimburse the claimant for the cost of the disputed ticket. This shall be the claimant's only remedy.

429:20-1-8. Game end date or game promotion end date and prize claim period

(a) The OLC, at any time, may announce the end date for an individual game.

(b) No tickets shall be sold past the game end.

(c) Online game prizes shall be claimed no later than 180 days after the drawing date of the individual game.

(d) Online Game Promotion end dates and related promotion entry dates will be provided in the Online Game Promotion Procedures for each online game promotion.

429:20-1-9. Draw procedures

Drawings procedures for online games and Online Game promotions will be defined in an OLC approved and secure draw procedures document.

429:20-1-10. Governing law

In purchasing a ticket, the player agrees to comply with, and abide by, the Act, and all rules and final decisions of the OLC, and all procedures and instructions established by the OLC for the conduct of the game or game promotion.

429:20-1-11. Prize withholdings

All prizes are subject to applicable federal tax withholdings, state income tax, and other required state withholdings, or delinquent state debt.

429:20-1-12. Game report

Following the time period in which prizes may be claimed after termination of a game, the OLC shall prepare a report that shows, at a minimum, the total number of tickets sold and the number of prizes awarded in the game.

429:20-1-13. Prize amounts for online games

(a) The total amount of prize money allocated to the winnings pool for online games shall be a minimum of forty-five percent (45%) of the total gross Online Game sales.

(b) The allocation of the Online Game winnings to the prize pool categories shall be provided in the Online Game Procedures.

(c) All online game prizes shall be paid in a lump sum cash payment, except prizes of one-million dollars ($1,000,000) or more which may be paid as provided in (d) and (e) of this section.

(d) First prize.

(1) The amount allocated to the first prize prize pool in an online large-jackpot game may be used to purchase securities or an annuity for each winning ticket.

(2) The first prize will be payable to winning ticket holders by an initial cash payment plus equal payments as established by OLC.

(3) Any winning ticket owned by multiple owners shall be funded as outlined in Paragraph 1 and 2 of this section to the owners as declared on the claim form for claiming the online prize.

(4) The first prize may be payable to winning ticket holder(s) in a lump sum cash payment equal to the cash value of the first prize prize pool. The decision to accept a lump sum payment must be unanimously agreed to by all owners of the winning ticket.

(e) In the event that a prize of one-million dollars ($1,000,000) or more is owned by multiple owners and the resulting prize amount payable to each owner is less than one-million dollars ($1,000,000), each owner of the prize amount will be paid in a lump sum cash amount.

429:20-1-14. Game sell-out prohibited

No OLC office or OLC retailer shall directly and knowingly sell a ticket or combination of tickets to any person or entity which would guarantee such a purchaser a prize in an online game or online game promotion.

429:20-1-15. Entry of plays

(a) Online Game plays may only be entered manually using the authorized lottery sales terminal or by means of a playslip provided by the OLC and hand-marked by the player or by other means approved by the OLC.

(b) Retailers shall not permit facsimile playslips, copies of playslips, or other materials not printed or approved by the OLC to be inserted into the sales terminal's playslip reader.

(c) Retailers shall not permit any device to be connected to a lottery sales terminal to enter plays, except as approved by OLC.

429:20-1-16. Online Game Procedures

(a) OLC shall make available to retailers and the public specifics for each Online Game prior to the game being introduced to the public for sale.

(b) The Online Game Procedures shall contain at a minimum the following:

(1) The game name;
(2) The retail sales price;
(3) The game play style;
(4) The game odds;
(5) The game prize levels;
(6) The retailer paid prize levels; and
(7) The method of prize drawings.

(c) This section shall also apply to any multi-state game offered for sale by OLC.

(d) Online Game Procedures will follow the format provided as an example only in Appendix C.

429:20-1-17. Online Game Promotion Procedures

(a) OLC shall make available to retailers and the public specifics for each Online Game Promotion prior to the promotion being introduced to the public for participation.

(b) The Online Game Promotion Procedures shall contain, at a minimum, the following:

(1) The game promotion name;
(2) Retail sales price, if any;
(3) Play style;
(4) Odds;
(5) Prize levels;
(6) Method of player entry;
(7) Method of prize drawings; and
(8) Promotion entry deadlines.

(c) This section shall also apply to any multi-state game promotion offered by OLC.

(d) Online Game Promotion Procedures will follow the format provided as an example only in Appendix D.

APPENDIX A. ONLINE GAME PROCEDURES [NEW]

The following information is provided as an example only.

Oklahoma Lottery Commission

ONLINE GAME PROCEDURES

Date

1. **Game Name:**
2. **Retail Sales Price:**
3. **Play Style:**
4. **Odds:**
5. **Prize Levels:**
6. **Retailer Paid Prize Levels:**
7. **The Method of Prize Drawings:**

Approved

_____ _____

James R. Scroggins Date
EXECUTIVE DIRECTOR

APPENDIX B. ONLINE GAME PROMOTION PROCEDURES [NEW]

The following information is provided as an example only.

Oklahoma Lottery Commission
ONLINE GAME PROMOTION PROCEDURES

Date

1. **Game Promotion Name:**
2. **Retail Sales Price (if any):**
3. **Play Style:**
4. **Odds:**
5. **Prize Levels:**
6. **Method of Player Entry:**
7. **Prize Drawings or Winner Selection Method:**
8. **Promotion Entry Deadlines:**

Approved

_____ _____

James R. Scroggins Date
EXECUTIVE DIRECTOR

[OAR Docket #06-1035; filed 5-22-06]

TITLE 510. STATE BOARD OF OSTEOPATHIC EXAMINERS CHAPTER 10. LICENSURE OF OSTEOPATHIC PHYSICIANS AND SURGEONS

[OAR Docket #06-1066]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Fee Schedule
510:10-7-1. Fees for Licensure [AMENDED]
AUTHORITY:
Oklahoma Osteopathic Medicine Act, 59 O.S. 2001, §624 et seq.
DATES:
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December 23, 2005 through March 16, 2006
Public hearing:
March 16, 2006
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March 23, 2006
Submitted to House:
March 23, 2006
Submitted to Senate:
March 23, 2006
Gubernatorial approval:
May 4, 2006
Legislative approval:
Failure of the Legislature to disapprove this rule resulted in approval on May 18, 2006
Final adoption:
May 18, 2006
Effective:
June 25, 2006
SUPERSEDED EMERGENCY ACTIONS:
None
INCORPORATIONS BY REFERENCE:
None
ANALYSIS:
This amendment is to promote public health, safety and welfare by providing adequate resources to the Oklahoma State Board of Osteopathic Examiners to allow it to carry out its statutory duty under Oklahoma law.
CONTACT PERSON:
Daniel J. Gamino, legal counsel, Oklahoma State Board of Osteopathic Examiners, 3315 NW 63rd, Oklahoma City, OK 73116, 405-840-3741.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULE IS CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 7. FEE SCHEDULE

510:10-7-1. Fees for licensure

The following fees shall apply for licensure as an osteopathic physician and surgeon:

(1) Fee for Exam $575.00
(2) Renewal Fee for license (Physician/Surgeon)
  (A) In-State Renewal ~~$200.00~~ $225.00
  (B) Out-of-State Renewal ~~$130.00~~ $150.00
  (C) Residents and Fully Retired Physicians $200.00
(3) Certificate of Grades (Form Letter) $50.00
(4) Duplicate License (Physician/Surgeon) $50.00
~~(5) Endorsement Application Fee $400.00~~
(5~~6~~) Late Re-registration Fee ~~$100.00~~ $150.00
(6~~7~~) Copies of Records (per page) $.25
(7~~8~~) Verification of Licensure ~~$25.00~~ $30.00
(8~~9~~) Supplemental Report & Research $20.00/hr
(9~~10~~) Registration to Dispense Dangerous Drugs ~~$25.00~~ $50.00
~~(11) Reciprocity Fee $400.00~~
(10~~12~~) Licensure Data Base
  (A) Fee for list $50.00
  (B) Fee for disk $50.00
(11~~13~~) Fee for Certification of Files $5.00
(12~~14~~) Returned Check Fee $25.00
(13~~15~~) Hand Grading Examination $75.00
(14) License Application Fee $575.00

[OAR Docket #06-1066; filed 5-24-06]

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

[OAR Docket #06-963]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 7. Collections and Disbursements
550:1-7-2 [AMENDED]
AUTHORITY:
Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)
DATES:
Comment period:
February 2, 2006, through March 7, 2006
Public hearing:
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Gubernatorial approval:
April 25, 2006
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Failure of the Legislature to disapprove the rules resulted in approval on May 11, 2006.
Final adoption:
May 11, 2006
Effective:
July 1, 2006
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a

ANALYSIS:

The amendments to OAC 550:1-7-2 clarify the procedure for payment of the pension benefit to an eligible beneficiary or to the estate of a member or beneficiary for the month in which a retired member or beneficiary dies.

Related statutes are 11 O.S. Section 50-101 and 11 O.S. Section 50-114(G).

CONTACT PERSON:

Linda Ruckman, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 27.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

SUBCHAPTER 7. COLLECTIONS AND DISBURSEMENTS

550:1-7-2. Pension vouchers

(a) The monthly pension voucher, payable to members, eligible beneficiaries, alternate payees, or the member's estate shall be mailed or directly deposited on the last business day of the month. Effective January 1, 2006, the monthly pension benefit payable to all members, beneficiaries, or alternate payees shall be directly deposited on the last business day of the month.

(1) Any member, beneficiary, or alternate payee receiving a monthly pension benefit by paper voucher as of June 30, 2005, shall have until December 31, 2005, to identify a personal depository agent for direct deposit of their monthly pension benefit. Effective January 1, 2006, the monthly pension benefit will not be paid by the System until a personal depository agent is identified for direct deposit of the benefit.

(2) Any member or beneficiary receiving a monthly pension benefit by direct deposit or who is eligible to begin to receive a monthly pension benefit on or after July 1, 1999, shall have each monthly pension benefit directly deposited on the last business day of the month.

(b) Upon the death of a member or eligible beneficiary, the monthly pension benefit shall be payable as follows:

(1) If the member dies during the month but not on the last day of the month and there is a beneficiary, the full monthly pension benefit for the month of the member's death shall be paid to the member's beneficiary upon proper application and approval by the Board.

(2) If the member dies during the month but not on the last day of the month and there is not a beneficiary, the full monthly pension benefit for the month of the member's death shall be paid to the member's estate.

(3) If the eligible beneficiary dies during the month but not on the last day of the month and there is another eligible beneficiary, the full monthly pension benefit for the month of the eligible beneficiary's death shall be paid to the other eligible beneficiary upon proper application and approval by the Board.

(4) If the eligible beneficiary dies during the month and there is not another eligible beneficiary, the full monthly pension benefit for the month of the eligible beneficiary's death shall be paid to the eligible beneficiary's estate.

(~~b~~c) The deferred option voucher shall be mailed first class as directed by the member, eligible beneficiaries, alternate payees, or member's estate.

[OAR Docket #06-963; filed 5-16-06]

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

[OAR Docket #06-964]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

550:15-1-2 [AMENDED]

AUTHORITY:

Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)

DATES:

Comment period:

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May 11, 2006

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July 1, 2006

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

Incorporated standards:

Table V issued as part of the income tax regulations under Section 72 of the Internal Revenue Code of 1986.

Incorporating rule:

550:15-1-2

Availability:

8:00 a.m. to 4:30 p.m., Monday through Friday at Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Suite 305, Oklahoma City, Oklahoma.

ANALYSIS:

The amendments to OAC 550:15-1-2 clarify the method by which the non-taxable portion of a participant's deferred account balance is calculated pursuant to requirements of the Internal Revenue Service.

Related statutes are 11 O.S. Section 50-111.3 and 11 O.S. Section 50-114.2.

CONTACT PERSON:

Linda Ruckman, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 27.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

550:15-1-2. Forward drop

(a) **Application.**

(1) The applicant must have twenty (20) years or more of credited service with the Oklahoma Police Pension and Retirement System to be eligible.

(2) The applicant must submit his/her completed application for participation in the Oklahoma Police Deferred Option Plan. Forms will be provided by the Oklahoma Police Pension and Retirement System.

(3) The effective date of membership will be the first day of the month.

(4) Once the Board has approved a member's application and the member's option account has been credited with the first contribution or benefit, the member's participation in the Oklahoma Police Deferred Option Plan is irrevocable as long as the member remains employed.

(b) **Contributions.**

(1) The final member contribution made to the Oklahoma Police Pension and Retirement System shall be for the last pay period prior to the first of the month in which the member becomes a participant in the Oklahoma Police Deferred Option Plan.

(2) The employer's contribution will continue to the Oklahoma Police Pension and Retirement System.

(3) The member's option account shall be credited fifty percent (50%) of the employer's contribution received for the member and the Oklahoma Police Pension and Retirement System shall be credited fifty percent (50%). The credit to the member's option account shall be made the next work day after receipt of the employer's contribution.

(4) Only the member's portion of the employer's contribution will be credited to the member's option account. No other contributions will be accepted.

(5) When a member has participated in the Oklahoma Police Deferred Option Plan for five (5) years or if the member terminates employment prior to the end of five (5) years, contributions will no longer be credited to the member's option account.

(c) **Benefits.**

(1) The monthly retirement benefit that would have been payable had the member elected to cease employment and receive a service retirement shall be credited into the member's option account.

(2) The member's service retirement benefit is frozen and at no time will he/she be allowed to increase his/her pension benefit due to additional years of service.

(3) The monthly retirement benefit will be credited to the member's option account the last day of the month.

(4) A member who participates in this plan shall be eligible to receive cost of living increases.

(d) **Interest.**

(1) The member's option account shall earn interest at a rate of two percent (2%) below the rate of return of the total investment portfolio of the System, but no less than the actuarial assumed interest rate established at the beginning of the fiscal year as certified by the actuary and approved by the Board in the yearly evaluation report of the actuary. This report is on a fiscal year basis ending on June 30.

(2) The Fund's annual rate of return shall be calculated and certified by the Board's financial consultant. The annual rate of return shall be for the fiscal year ending June 30.

(3) The interest shall be credited to the member's option account on an annual basis which is defined as fiscal year ending June 30. The amount of the interest credited shall be calculated at simple interest. The formula for calculating the interest shall be the amount of the deposit times the certified annual rate of return, less two percent (2%), divided by 365 days times the number of days the deposit was credited to the member's option account for the fiscal year.

(4) Each member shall receive an itemized statement at least on an annual basis beginning with interest credited at June 30, 1991.

(5) Upon completion of the five year term in the Oklahoma Police Deferred Option Plan or earlier termination of employment by the member, annual interest calculated through the last day of the month employed and certified by the Board's financial consultant will be credited to the member's option account provided the annual rate of return is greater than the actuarial assumed interest rate. If the rate of return is less than the actuarial assumed rate then the member's option account will be credited at the assumed interest rate of the last actuarial report.

(6) When a member has participated in the Oklahoma Police Deferred Option Plan for five (5) years or if the member terminates employment prior to the end of the five (5) years, the member's option account ceases to earn interest.

(7) At the conclusion of a member's participation in the Oklahoma Police Deferred Option Plan, the member must terminate employment and start receiving the member's accrued monthly retirement benefit from the System. Such termination has at all times included reemployment of a member by a participating municipality but only in a position not covered under the System or as a police chief. Thus, such a member would receive in-service distributions of such member's accrued monthly retirement benefit from the System.

(e) **Payment.**

(1) The member should make payment selection a minimum of thirty (30) days prior to termination of employment. The form on which payment selection must be submitted will be provided by the System.

(2) The member may select a lump sum payment, equal to the member's option account, which will be paid directly to the member by the Oklahoma Police Deferred Option Plan. This payment will be made after the last

contribution has been received and interest applied following termination of employment and after receipt of the completed payment selection form.

(3) The member may select a direct rollover of his or her distribution in accordance with OAC 550:1-7-5. If the member does not select an Eligible Retirement Plan as described in OAC 550:1-7-5, or an annuity, the member shall receive a lump-sum payment equal to the member's option account balance.

(4) The member may select an annuity to be provided by a third party. The Oklahoma Police Deferred Option Plan shall not be subject to any fees or charges from the annuity provider.

(5) Once the member's option account has been paid to the member, as a Direct Rollover or to the member's annuity provider, the member shall not have any recourse against the Oklahoma Police Deferred Option Plan, the Oklahoma Police Pension and Retirement System, its Executive Director and staff, and/or the Board.

(6) For a lump sum payment, direct rollover or a combination thereof, an exclusion ratio must be calculated and applied to the distribution amount from the Oklahoma Police Deferred Option Plan to determine the portion that may be excluded from income. This exclusion ratio will equal the member's after-tax contributions to the System divided by the expected return. The expected return is the sum of:

(A) the Oklahoma Police Deferred Option Plan option account balance plus

(B) the amount of value of the monthly pension that the member is expected to receive over time based on single life expectancy factors from Table V issued as part of the income tax regulations under Section 72 of the Internal Revenue Code of 1986.

(f) **Beneficiaries.** If the participant dies during the period of participation in the Oklahoma Police Deferred Option Plan, a beneficiary may elect to receive a lump sum payment equal to the account balance of the participant. A beneficiary who is a surviving spouse of a member may elect a Direct Rollover of the account balance in accordance with OAC 550:1-7-5. If there is no beneficiary or if the beneficiary predeceases the participant a lump sum payment shall be paid to the estate of the participant.

[OAR Docket #06-964; filed 5-16-06]

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

[OAR Docket #06-965]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
550:20-1-2 [AMENDED]
AUTHORITY:
Oklahoma Police Pension and Retirement Board; 11 O.S. Sections 50-105.2(A)(B), and 50-106(3)
DATES:
Comment period:
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Final adoption:
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Effective:
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The amendments to OAC 550:20-1-2 add as a method for payment of the actuarial purchase price for transferred credited service a trustee-to-trustee direct rollover as authorized by the statutes governing the System. The amendments also delete language that repeats statutory provisions.

Related statutes are 11 O.S. Section 50-111.2 and 11 O.S. Section 50-111.4.
CONTACT PERSON:
Linda Ruckman, Administrative Officer, Oklahoma Police Pension and Retirement System, 1001 N.W. 63rd Street, Ste. 305, Oklahoma City, OK 73116-7335, 405-840-3555 Ext. 27.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JULY 1, 2006:

550:20-1-2. Computation

All purchases of transferred credited service pursuant to 11 O. S. Section 50-111.4, shall be based upon the actuarial cost of the incremental projected benefits to be purchased.

(1) The actuarial cost, and any tables formulated for the purpose of determining such cost during each calendar year, shall be based on the actuarial assumptions utilized in the actuarial valuation report as of the preceding July 1.

(2) The actuarial value shall be based upon the member's age, salary and service at the time of purchase, together with the earliest age for retirement and actuarially projected salary at time of retirement. For purposes of this actuarial cost, it is assumed that all members are married at the time of retirement. If purchase is not made within 30 days of Board approval, the purchase must be recalculated and the actuarial cost may increase.

(3) For purposes of this actuarial cost, the member's age shall be rounded up or down to the nearest birthday.

(4) For purposes of this actuarial cost, the mortality tables shall be formulated as a unisex table assuming post retirement mortality weighted 90% male and 10% female.

(5) In the event a member who chooses to purchase service has been employed less than twelve (12) months, his salary shall be annualized based upon the completed calendar months of payroll information.

(6) In lieu of installment payments (for a purchase where installment payments are otherwise allowed by Oklahoma state statutes), an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating service, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by use of a direct trustee-to-trustee transfer or direct rollover as authorized by the statutes governing the System.

~~(7) Effective July 1, 2003, in lieu of installment payments (for a purchase where installment payments are otherwise allowed by Oklahoma state statutes), an active member may elect to make the payment of the actuarial purchase price, repayment of a previous withdrawal, purchase of previous non-participating service, or any other eligible purchase or repayment permitted and authorized by the statutes governing the System by use of a direct trustee-to-trustee transfer from a Code Section 403(b) annuity, a governmental Code Section 457 plan, and/or a Code Section 401(a) qualified plan.~~

(~~8~~7) Notwithstanding (6) ~~and (7)~~ of this subsection, purchases may be made by a cash lump sum payment, installment payments (where otherwise allowed by Oklahoma state statutes), ~~and/or by~~ trustee-to-trustee transfer and/or direct rollover as described in (6) ~~and (7)~~ of this subsection.

[OAR Docket #06-965; filed 5-16-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 1. ADMINISTRATIVE OPERATIONS

[OAR Docket #06-888]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Practice and Procedure
Part 8. Settlement of Tax Liability
710:1-5-86. [AMENDED]
AUTHORITY:
68 O.S. § 203, Oklahoma Tax Commission
DATES:
Comment Period:
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Public hearing:
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March 10, 2006
SUBMITTED TO SENATE:
March 10, 2006
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Existing Section 710:1-5-86, which describes the Commission's review of a tax settlement agreement, has been amended to implement the provisions of Senate Bill 811 which raised the amount of a settlement agreement, abatement agreement or waiver of interest or penalty which requires approval of a judge of the District Court of Oklahoma County to $10,000.00. **[68:219/68:219.1]**
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. PRACTICE AND PROCEDURE

PART 8. SETTLEMENT OF TAX LIABILITY

710:1-5-86. Review by Commission

(a) **Unanimous vote required.** A unanimous vote of the members of the Commission is required for approval of a Settlement Agreement.

(b) **Discretionary act.** The determination of settlement is within the sole discretion of the Commission.

(c) **Facts and other considerations.** In making its decision, the Commission will consider, but not be limited to, the following matters:

(1) The likelihood of collection of the debt;

(2) The amount of the debt;

(3) Efforts made by the applicant to pay a part of the debt prior to filing an application for settlement;

(4) The taxpaying record of the applicant;

(5) Applicant's current and possible future earning capacity;

(6) The portion of the tax itself which would be paid under the terms of the proposed Settlement Agreement;

(7) The composition of the balance of tax, penalty, and interest due;

(8) The percentage of the tax debt proposed to be settled;

(9) The Applicant's age and health;

(10) The Applicant's net worth;

(11) The acceptance by the Internal Revenue Service of an Offer in Compromise and the amount;

(12) The age of the debt;

(13) The existence of liens;

(14) Current operating status of any business;

(15) Bankruptcy status;

(16) The amount determined to be collectible. This amount is generally based upon the Commission's evaluation of the reasonable collection potential of the taxpayer's assets and revenue. The collectible amount is one factor used to determine if an offer is reasonable.

(17) Other liable parties;

(18) Whether tax debt due is a trust tax collected by Applicant but not remitted to the Commission;

(19) What other persons are liable~~,~~ ;

(20) Whether the Applicant is located within Oklahoma or not;

(21) The accuracy and veracity of the Applicant's representations to the Commission;

(22) The recommendations of the Account Maintenance Division; and

(23) The expense and time expended in future collection efforts by the Commission on the Applicant's debt.

(d) **Other circumstances which may be considered.** In addition to the factors set out in (c) of this Section, the Commission may consider any other aggravating or mitigating circumstances contributing to the request for settlement, including, but not limited to:

(1) Good faith efforts made by taxpayer to comply with the tax laws of this state.

(2) Benefit received by taxpayer from nonpayment of the tax.

(3) Involvement of taxpayer in economic activity which gave rise to tax liability.

(e) **No appeal of denial.** The decision by the Commission to decline a proposed Settlement Agreement is final and is not appealable.

(f) **Court approval required.** If the amount of the tax liability to be abated exceeds ~~Five Thousand Dollars ($5,000.00)~~ Ten Thousand Dollars ($10,000.00), the Settlement Agreement requires the approval of a judge of the district court of Oklahoma County.

(g) **Resubmission of application.** If a taxpayer has previously submitted an application for a Settlement Agreement and that application was not accepted, the taxpayer may apply at a later date if financial conditions have changed, or to submit additional information not previously provided for review by the Commission.

[OAR Docket #06-888; filed 5-10-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 10. AD VALOREM TAX

[OAR Docket #06-1113]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 4. Annual Valuation Mandate
710:10-4-1. [AMENDED]
710:10-4-2. [AMENDED]
710:10-4-3. [AMENDED]
710:10-4-6. [AMENDED]
710:10-4-7. [AMENDED]
710:10-4-8. [AMENDED]
710:10-4-9. [AMENDED]
Subchapter 7. Manufacturing Facilities
710:10-7-2. [AMENDED]
710:10-7-2.1. [AMENDED]
710:10-7-4. [AMENDED]
710:10-7-5. [AMENDED]
710:10-7-6. [AMENDED]
710:10-7-10. [AMENDED]
710:10-7-11. [AMENDED]
710:10-7-12. [AMENDED]
710:10-7-13. [AMENDED]
710:10-7-14. [AMENDED]
710:10-7-15. [AMENDED]
710:10-7-16. [AMENDED]
710:10-7-17. [AMENDED]
710:10-7-22. [AMENDED]
710:10-7-23. [AMENDED]
710:10-7-24. [AMENDED]
710:10-7-25. [AMENDED]
Subchapter 12. Agricultural Land Conservation Adjustment
710:10-12-1. [AMENDED]
710:10-12-4. [AMENDED]
710:10-12-7. [AMENDED]
710:10-12-8. [AMENDED]
710:10-12-9. [AMENDED]
710:10-12-10. [AMENDED]
710:10-12-11. [AMENDED]
710:10-12-13. [AMENDED]
710:10-12-20. [AMENDED]
Subchapter 14. Full Fair Cash Value Exemption for Disabled Veterans in Receipt of Compensation at the One Hundred Percent Rate
710:10-14-1. [AMENDED]
710:10-14-3. [AMENDED]
710:10-14-5. [AMENDED]
710:10-14-6. [AMENDED]

AUTHORITY:
68 O.S. § 203, 2817, and 2902(H); Oklahoma Tax Commission

DATES:
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n/a
ANALYSIS:

Proposed amendments to **Subchapter 4**, *"Annual Valuation Mandate"*, have been made to implement the provisions of House Bill 1728 which modified the definition of fair cash value to mean actual fair cash value, to clarify policy and procedures regarding the various aspects of the annual valuation process and to add and update constitutional and statutory references.

Proposed amendments to **Subchapter 7**, *"Manufacturing Facilities"*, have been made to implement statutory changes. [SB 905 and HB 1384] Sections in this Subchapter have been amended to reflect changes in certain qualification criteria, application filing procedures, and qualifying facilities, to delete obsolete language, to update statutory references and to conform rules to existing statutes. Language has been added to extend the period for filing of applications for exemption pursuant to Senate Bill 1254(2004).

Proposed amendments to **Subchapter 12**, *"Agricultural Land Conservation Adjustment"*, have been made to implement statutory changes which address valuation methodology. [HB 1408] Sections in this Subchapter have also been amended to incorporate directives from an Attorney General Opinion regarding reimbursement procedures. Other amendments have been made to correct statutory citations and other references.

Proposed amendments to **Subchapter 14**, *"Full Fair Cash Value Exemption for One Hundred Percent Disabled Veterans"* have been made to clarify the application process including the documentation required to qualify for the exemption.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 4. ANNUAL VALUATION MANDATE

710:10-4-1. Purpose

The provisions of this Part clarify county requirements and Commission audit procedures related to annual valuation mandated by 68 O.S.~~1996,~~ § 2830(B).

710:10-4-2. Definitions

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

"Annual valuation" means the systematic review and adjustment of the appraisals and assessments, by the ~~County Assessor~~ county assessor, of taxable real and personal property, county-wide, on an annual basis, necessary to meet constitutional and statutory responsibilities of the ad valorem assessment process.

"Visual inspection program" means that program mandated by law and instituted by the counties *to gather data about real property from physical examination of the property and improvements in order to establish the fair cash values of properties so inspected at least once each four (4) years and the fair cash values of similar properties on an annual basis.* [**See:** 68 O.S.~~1997,~~ §2802(30)]

"Actual fair cash value" means the value or price at which a willing buyer would purchase property and a willing seller would sell property if both parties are knowledgeable about the property and its uses and if neither party is under any undue pressure to buy or sell and for real property shall mean the value for the highest and best use for which such property was actually used, or was previously classified for use, during the calendar year next preceding the applicable January 1 assessment date. [**See:** 68 O.S. Supp. 2005, §2802(18)].

710:10-4-3. Responsibilities of County Assessor

(a) **Assessor responsible for annual valuation.** It shall be the responsibility of the ~~County Assessor~~ county assessor to value all taxable real property annually as of January 1 at not less than 11 percent and not more than 13.5 percent of its fair market ~~use~~ value or agricultural use value as established by the Oklahoma Constitution, Article 10 § 8, and all taxable personal property shall be valued annually as of January 1 at not less than 10 percent and not more than 15 percent of its actual fair cash value ~~market use value, as established by the Oklahoma Constitution~~. The methods utilized for valuation shall be those defined by the Oklahoma Constitution, state statutes, and applicable Commission rules. Where valuation methodology is not specified by the Oklahoma Constitution, Oklahoma Statutes, State Board of Equalization guidelines, Commission rules, or bulletins, an assessor shall follow generally accepted principles of Computer Assisted Mass Appraisal as detailed in the International Association of Assessing Officers (I.A.A.O.), most recent edition, standards, books, training manuals, and similar educational courses.

(b) **Assessor responsible for all actions necessary to make, maintain, and update assessment records.** The ~~County Assessor~~ county assessor shall carry out those activities necessary to maintain and update existing appraisal and assessment information essential for accurate annual assessments as required by law. Work activities necessary to accomplish this include review of new construction, construction of additions or modifications to existing structures, building permits (if available), demolitions, fire damage, or natural disasters such as flood, wind, rain, tornado or other causes. These work activities shall be performed utilizing approved Oklahoma Tax Commission ~~data collection cards and other appropriate approved forms.~~ computer generated or printed forms.

(c) **Assessor responsible for making all visual inspections required by law.** All taxable real property shall be visually inspected by the ~~County Assessor's~~ county assessor's staff on a four-year visual inspection cycle as specified in state statutes. (ref: 68 O.S. § 2820)

(d) **Assessor responsible for utilization of most current values and methodologies.** Assessors shall utilize the most current, approved agricultural use value dollar per point developed for each respective county, and shall utilize the use value methodology specified in 68 O.S. ~~1997,~~ § 2817(C) for valuation of agricultural land. Assessors shall review agricultural land use ~~types~~ constant with 68 O.S. § 2920 ~~on a periodic~~

~~basis~~ to determine if use has changed. Modifications to land use types shall be made annually if a significant change in land use has occurred, pursuant to 68 O.S. ~~Supp. 1997,~~ §§2817 and 2829.

710:10-4-6. Annual valuation of all real and personal property outside visual inspection area

(a) **All taxable property to be valued on an annual basis.** Pursuant to 68 O.S. ~~1991,~~ §2829 and 68 O.S. ~~Supp. 1996,~~ §§2817 and 2830, ~~County Assessors~~ county assessors shall value all taxable real and personal property on an annual basis, including non-sold property outside a county's visual inspection area, for any particular tax year. Counties failing to annually value all real and personal property shall be subject to non-compliance actions as specified in 68 O.S. ~~Supp. 1996,~~ §2830

(b) **Systematic county-wide review of all ~~market values~~ actual fair cash values to be conducted.** Counties shall conduct a systematic county-wide review of all market values established for ad valorem taxation on an annual basis, to adjust for changing market conditions, areas which are rapidly increasing or decreasing in value, and any other market influences affecting values. This shall include sales ratio studies by neighborhood or market area and county-wide. Any additions, neighborhoods, or market areas which are showing significant change through county sales ratio analysis shall be adjusted to bring those groups of properties to ~~market~~ actual fair cash value. The IAAO Standard on Ratio Studies, latest edition, may be utilized as a guide for review parameters, in conjunction with applicable Constitutional, statutory and administrative directives.

(c) **Annual valuation of real and personal property outside of visual inspection area.** Analysis of value change impact data should be made for modified properties. Upon completion of an annual county-wide value review, an analysis of value change impact data may be obtained by the Oklahoma Tax Commission for certain additions, neighborhoods, or market areas which have been modified.

710:10-4-7. CAMA completion requirement as evidence of annual valuation

(a) **Annual valuation utilizing CAMA program required.** In order to be found in compliance with statutory annual valuation requirements, counties shall be required to generate and maintain values for all taxable property, utilizing a system of Computer Assisted Mass Appraisal (CAMA), which meets state standards, ~~by no later than tax year 1999, to coincide with the commencement of the next visual inspection cycle (1999-2002),~~ pursuant to 68 O.S.~~1991,~~ §§2820(C), 2829, 2830(B). Utilization of CAMA shall include an ongoing, systematic CAMA valuation program, as well as an ongoing sales verification program, with all current sales information to be entered into the respective CAMA systems for analysis and use in the valuation process.

(b) ~~**Result of non-compliance.** Any county not satisfying the requirements of this section shall be recommended for non-compliance action to the State Board of Equalization for failure to comply with statutory annual valuation requirements.~~ **Non-compliance.** Any county not satisfying the requirements of this section may be recommended for non-compliance to the State Board of Equalization dependent upon a detailed review of the information obtained as a part of the Annual Valuation audit contained in rules 710:10-4-8 and 710:10-4-9.

710:10-4-8. Determination of compliance with annual valuation requirements; certification to the State Board of Equalization

Data and other information as to each component of the assessment process shall be gathered, reviewed, and analyzed, for each county, in order to make various compliance determinations. The non-exclusive factors listed in (1) through (14) of this Section describe the basis and methodologies which the Commission shall utilize in its compliance review of the various counties, and from which certification of annual valuation may be made to the State Board of Equalization.

(1) Review of the county's median assessment / sales price ratio overall and by property class.

(2) Review of the county's coefficient of dispersion (COD), overall, and by property class.

(3) Review of standard statistical measures defined and described in the ***International Association of Assessing Officers (IAAO)*** most recent edition, textbooks, reference materials, and coursework or comparable.

(4) Determination of compliance, based upon audit of the county's visual inspection plan and any amendments to the plan on file with the Commission.

(A) Review of the inspection area schedule contained in the current visual inspection plan on file with the Ad Valorem Division of the Commission, to determine whether adequate progress is being made.

(B) Review of area outside current year visual inspection area, to determine whether annual valuation county-wide is being performed. [**See:** 68 O.S.~~1991,~~ § 2829(C)]

(5) Review of all property subject to value limitation, ~~capped, sold, and non-sold property,~~ to determine compliance with Constitutional, statutory, and administrative directives.

~~(A) An analysis of these sold, frozen, capped, and non-sold samples will be conducted and reviewed for evidence of selective reappraisal.~~

~~(B) Comparison with proximity properties will be made.~~

(6) Determination of compliance, based upon a comprehensive review and comparison of current assessment roll with previous assessment roll, analyzing the types and nature of changes, and typical change percentages.

(A) Median/COD comparison between the current assessment roll and sales, current and between the previous assessment roll and sales.

(B) Findings regarding comparison of Medians/COD's.

(C) Review of the numbers, types, nature, and location of properties changed overall, for the visual inspection area, and for the remainder of the county.

(D) Review of numbers, type and nature of non-inspection area notices sent.

~~(7) Determination of compliance, based upon a review of personal property renditions and personal property valuations for determination of compliance.~~

(~~8~~7) Determination of compliance, based upon a review of samples of agricultural, business, and household personal property renditions and valuations (where assessment of household personal property has not been abolished pursuant to Article X, Section 6(b) of the Oklahoma Constitution).

(~~9~~8) Findings upon review of personal property samples for determination of whether uniform assessment percentage is being applied on all personal property classes and types. (**See:** Okl. Const. Art. 10 § 6(b).

(~~10~~9) Findings based upon review of CAMA system to determine whether the systematic generation and maintenance of values and ongoing sales file maintenance and analysis mandated by state statute is being utilized in a state-approved system of computer assisted mass appraisal. [**See:** 68 O.S.~~1991,~~ § 2829]

(~~11~~ 10) Findings based upon review of Oklahoma Tax Commission and State Board of Equalization approved agricultural use value methodology to determine if the county is utilizing the most current approved dollar ~~s~~ per point and the use value methodology specified in 68 O.S.~~Supp.1996,~~ § 2817(C) for valuation of agricultural land.

(~~12~~11) Findings based upon review to determine if the county is ~~checking~~ monitoring agricultural land use constant with 68 O.S. § 2820 ~~types~~ on ~~a periodic~~ an annual basis to determine if the actual use has changed.

710:10-4-9. Findings of the annual valuation audit

(a) The annual valuation audit shall be based upon the factors contained in 710:10-4-8.

(b) Each county shall be given a score based upon the degree of compliance with each factor listed. The county shall be required to obtain a score of seventy percent (70%) in order to be certified as conducting annual valuation pursuant to 68 O.S. ~~1991,~~ §§ 2817, 2829, and 2830(B).

(c) ~~The Oklahoma Tax Commission will certify annual valuation to the State Board of Equalization upon review of the items set out in this Subsection. Each question component will be given 10 points. The county shall be required to obtain a score of seventy percent (70%) to be certified as conducting annual valuation.~~ The Oklahoma Tax Commission will recommend to the State Board of Equalization upon review of the criteria set forth in this subsection that the county is in compliance with the annual valuation requirement by achieving a score of seventy (70) percent.

(1) The county has complied with the State Constitutional provisions regarding assessment percentages. [**See:** Article 10. Section 8A, Okla. Const]

(2) The county's assessment procedures are not increasing capped property in excess of the five percent cap unless the property is improved or transferred.

(3) The county's assessment procedures properly applied the Constitutional Senior Valuation limitation to eligible properties. [**See:** Article 10. Section 8C, Okla. Const.]

(4) Uncapped property is valued at its actual fair cash value, based upon its highest and best use for which used, pursuant to Title 68 of the Oklahoma Statutes and Article 10, Section 8 of the Oklahoma Constitution.

(5) The county is applying the same assessment percentage for all locally valued personal property.

(6) The county is properly applying Article 10, Sections 8, 8B, and 8C, of the Oklahoma Constitution and is implementing those provisions in a consistent manner, using the approved forms.

(7) The county is conducting its visual inspection program as described in its visual inspection plan.

(8) The county is conducting maintenance activity, i.e. addition of new construction and add-ons, deletions, demolition, fire/storm damage.

(9) The county is making adjustments as needed to sold and unsold property to maintain market value both inside and outside of the visual inspection area.

(10) The county is using appropriate use value methodology approved by the Oklahoma Tax Commission Ad Valorem Division for valuation of agricultural properties.

(d) If the county score is less than seventy percent (70%), the Oklahoma Tax Commission shall certify that the county is not in compliance with the annual valuation requirements and shall recommend to the State Board of Equalization the appropriate category of non-compliance, as required by 68 O.S.~~1996,~~ § 2830(B).

(e) The Oklahoma Tax Commission may notify the county assessor of any areas of improvements or concerns from the results of the Annual Valuation Audit. The Commission may provide the county with statistical data and other information that the Commission determines may be beneficial to the advancement of the annual valuation program.

SUBCHAPTER 7. MANUFACTURING FACILITIES

710:10-7-2. Requirements for exemption for qualified manufacturing facilities established, expanded, or acquired, on or before July 1, 2003

(a) **Manufacturing.** In order to be approved as a **"manufacturing facility,"** the facility must be engaged in an activity defined as "manufacturing" by the **Standard Industrial Classification (SIC) Manual** or the **North American Industrial Classification System (NAICS)**, published by the U.S. Office of Management and Budget, as supplemented, or as defined by the Oklahoma Legislature pursuant to Article 10, Section 6(B) of the Oklahoma Constitution. Businesses holding a Manufacturers Sales Exemption Certificate from sales and/or use tax are not necessarily eligible for the ad valorem five (5) year Manufacturers Exemption.

(b) **Research and development.** In order to be approved as **"research and development"** the facility must be engaged in activities so defined by 68 O.S.1994, § 2902(B)(4), which states that "*research and development shall mean activities directly related to and conducted for the purpose of discovering, enhancing, increasing or improving future or existing products or processes or productivity*". The **qualifying** Industrial Group Number in the SIC or NAICS Manual will be determined by the Commission.

(c) **Statutory requirements.** Facilities must meet requirements mandated by statute and summarized in this subsection.

(1) Facilities must satisfy the requirements of being new, expanded, or acquired. [**See:** 68 O.S. § 2902]

(2) For applications received by the county assessor:

(A) **On or before July 1, 2003.** The net increase in payroll shall be Two Hundred Fifty Thousand Dollars ($250,000.00) or more in annualized payroll, or a net increase of Two Million Dollars ($2,000,000.00) in capital improvements, while maintaining or increasing payroll~~;~~.

(B) **After July 1, 2003.** ~~The~~ **Net increase in payroll:** The net increased payroll must be at least Two Hundred Fifty Thousand Dollars ($250,000.00) if the facility is located in a county with a population of fewer than fifty thousand (50,000) persons; or at least One Million Dollars ($1,000,000.00) for applicants located in counties with populations of fifty thousand (50,000) persons or more~~. In the case of applications made pursuant to 68 O.S. § 2902(C)(6), there must be a net increase in payroll at the facility of at least Two Hundred Fifty Thousand Dollars ($250,000.00) attributable to the capital improvements, or a net increase of Seven Million Dollars ($7,000,000.00) in capital improvements,~~ while maintaining or increasing payroll.

(C) **After December 31, 2002, excluding payroll:** A manufacturing facility shall have the option of excluding from its payroll, payments to sole proprietors, members of partnerships, members of a limited liability company or stockholder employees under certain circumstances. Manufacturing facilities electing this option shall document the election by an attached addendum to the application at time of filing which states in detail any payroll exclusions. (See: 68 O.S. 2005 Supp.§ 2902(C)(4)

(D) **After July 2003. Oil refineries:** Refineries defined in N.A.I.C.S. Code 324110, provided the facility is used wholly and exclusively for the desulphurization of gasoline or diesel fuel is located in any county regardless of population and has a net increase in annualized payroll of Two Hundred Fifty Thousand Dollars ($250,000.00) or more.

(E) **After July 1, 2005. Net increase in payroll:** The net increase in payroll must be at least Two Hundred Fifty Thousand Dollars ($250,000.00) if the facility is located in a county with a population of less than seventy-five thousand (75,000) persons, or a payroll of One-Million Dollars ($1,000,000.00) if located in a county with a population in excess of seventy-five thousand (75,000) persons. The net increase in payroll must be attributed to capital improvements while maintaining or increasing payroll at the facility. (See: 68 O.S. 2005 Supp. § 2902(C)(4).

(~~C~~F) **Health care benefit plan required.** All facilities must offer, within one-hundred eighty (180) days of employment, a basic health benefits plan to the full time employees of the facility, pursuant to 68 O.S.Supp.2003, § 2902(C)(4)(b).

(3) A manufacturing concern, which does not meet the payroll requirement, shall submit with the initial application for exemption, an affidavit to the Oklahoma Tax Commission, signed by an officer. This affidavit will state that from the start of the initial construction, acquisition, or expansion, to the completion of said construction, acquisition, or expansion, or for up to three (3) years, whichever occurs first, the establishment or expansion of the facility will result in a net increase in payroll that meets the qualification criteria.

(4) A manufacturing facility requesting an exemption must hold title to real or personal property, or have an equity interest in real or personal property.

(5) The amount of increased payroll may include payroll for FTE in this State who are employed by an entity other than the facility which has otherwise qualified for the exemption. The Tax Commission shall audit all payroll submissions.

(6) **"Annualized payroll"** when used in this Section means using the average of the third and fourth quarters for the initial base line calculation and multiplying the result by four. This method shall be used for calculation of the initial base year and all subsequent years.

(7) **"Base-line payroll"** When used in this section shall mean payroll for the calendar year immediately preceding the initial construction, acquisition or expansion. The base-line payroll will then be compared to the payroll immediately preceding the January application date for the year of initial application and the subsequent four (4) years of eligibility.

(d) **Requirements for acquired existing facility.** An acquired existing facility must be unoccupied for a period of twelve (12) months prior to acquisition for initial qualification. [**See:** Art. 10, Section 6B, Okla. Const. and 68 O.S.Supp.2003, § 2902(A)]

(e) **Transfer of exemption.** If the ownership of a qualified facility currently enrolled in the exemption program, changes during the five-year exemption period, the exemption shall continue in effect for the balance of the five-year period, so long as all other qualifications are maintained.

710:10-7-2.1. Manufacturing facility exemption for facilities which are established, expanded, or acquired on or after January 1, 2000

(a) **Manufacturing facility.** "**Manufacturing facility"** means a facility engaged in mechanical or chemical transformation of materials or substances into new products. . .

which have received a manufacturers exemption permit pursuant to the provisions of 68 O.S.Supp.1999, § 1359.2, and all the facilities and establishments described in 68 O.S. § 2902(B)(1)(b)-(d). [**See:** 68 O.S. § 2902(B)(1)]. Machinery and equipment that is a direct replacement is not eligible for the exemption.

(b) **Facilities with sales tax exemptions.** The Tax Commission shall ~~honor~~ recognize all ~~manufacturer's limited exemption~~ businesses issued Manufacturers Exemption Permits pursuant to 68.O.S. § 1359.2 ~~issued prior to November 1, 1998.~~ however, ~~holders of such certificates shall apply for a Manufacturers Sales Exemption Certificate pursuant to the provisions of 68 O.S. § 1359.2.~~ businesses holding a Manufacturers ~~Sales~~ Exemption ~~Certificate~~ Permit ~~from~~ for sales and/or use tax must qualify for all conditions of eligibility in 68 O.S. §2902.

(c) **Research and development. "Research and development"** means activities directly related to and conducted for the purpose of discovering, enhancing, or increasing or improving future or existing products or processes or productivity. [**See:** 68 O.S. § 2902(B)(4)]

(d) **Statutory requirements.** Facilities must meet requirements mandated by statute and summarized in (1) through (4) of this subsection.

(1) Facilities must satisfy the requirements of being new, expanded, or acquired. [**See:** 68 O.S. § 2902]

(2) For applications submitted on or before July 1, 2003, the investment cost of the construction, acquisition or expansion of the manufacturing facility is Two Hundred Fifty Thousand Dollars ($250,000.00) or more within the calendar year in which the construction, acquisition or expansion occurred. Facility or facilities shall mean and include the land, building, structures, improvements, machinery, fixtures, equipment and other personal property used directly and exclusively in the manufacturing process. ~~Equipment that is a direct replacement is not eligible for exemption.~~

(3) While maintaining the number of FTE's required by previous statutes:

(A) **For applications submitted after Dec. 31, 2000, and before July 1, 2003~~,~~.** ~~a~~ A net increase of Two Hundred Fifty Thousand Dollars ($250,000.00) or more, in annualized payroll, or a net increase of Two Million Dollars ($2,000,000.00) or more, in capital improvements in the calendar year in which the construction, acquisition, or expansion has occurred, while maintaining or increasing payroll is required during the full five years of the exemption.

(B) **For applications submitted after July 1, 2003~~,~~.** ~~a~~ A net increase of Two Hundred Fifty Thousand Dollars ($250,000.00) or more, in annualized payroll for facilities located in counties with a population of fewer than Fifty Thousand (50,000) persons in the calendar year in which the construction, acquisition, or expansion has occurred. For facilities located counties with a population of Fifty Thousand (50,000) persons or greater, the net increase in annualized payroll is One Million Dollars ($1,000,000.00) in annualized payroll. [**See:** 68 O.S.Supp.2003, § 2902]

(C) **Before July 1, 2005: Base-line payroll.** To determine base-line payroll, the Tax Commission shall verify all payroll information through the Oklahoma Employment Security Commission (OESC) by using the average of the third and fourth quarter OESC reports of the calendar year immediately preceding the year for which initial application is made. [**See:** 68 O.S. § 2902(C). For subsequent year applications for exemption, payroll shall also be calculated using the average of the preceding third and fourth quarters' payroll, as certified by the OESC, immediately preceding the January application date. The base-line payroll will then be compared to the payroll immediately preceding the January application date for the year of initial application and the subsequent four (4) years of eligibility.

(D) **After July 1, 2005: Base-line payroll.** To determine base-line payroll the net increase must be at least Two Hundred Fifty Thousand Dollars ($250,000.00) if the facility is located in a county with a population fewer than seventy-five thousand (75,000) persons; or at least One Million dollars ($1,000,000.00) if located in counties with a population of seventy-five thousand (75,000) persons or more while maintaining or increasing payroll.

(i) A manufacturing concern which does not meet the amount of increased payroll shall submit to the Commission, with the initial application year of exemption, an affidavit, signed by an officer. The signed affidavit must state that from the start of initial construction, acquisition, or expansion - to the completion of said construction, acquisition, or expansion, or for three (3) years, which ever occurs first, the establishment or expansion of the facility will result in a net increase of the required annualized payroll. The amount of increased payroll may include payroll for full-time-equivalent employees in this state who are employed by an entity other than the facility which has qualified to receive an exemption pursuant to the provisions of this Section and who are leased or otherwise provided to the facility, if such employment did not exist in this state prior to the start of initial construction or expansion of the facility. It will be the responsibility of the manufacturer to supply the Oklahoma Employment Security Commission or the Oklahoma Tax Commission, or both, with verifiable data of payroll as required by the manufacturers with employees pursuant to (d)(3)(C) of this Section.

(ii) The facility will offer within one hundred eighty (180) days of the date of employment, a basic health benefit plan to the full-time employees of the facility [**See:** 68 O.S. § 2902(C)(4)(b).] Calculation of the number of employees shall be

made in the same manner as required ~~under~~ pursuant to 68 O.S. § 2357.4 for an investment tax credit.

(4) A manufacturing facility requesting an exemption must hold title to real or personal property, or have an equity interest in real or personal property.

(e) **Requirements for acquired existing facility.** An acquired existing facility must be unoccupied for a period of twelve (12) months prior to acquisition. [**See:** Art. 10, Section 6B, Okla. Const.] This requirement shall be construed as a qualification for a facility to initially receive an exemption and not as a qualification for that facility to continue to receive an exemption in each of the four (4) subsequent years following the year that the exemption was granted. [**See:** 68 O.S.Supp.2003, § 2902(A)] The FTE or payroll requirements for eligibility will be determined based on the year in which the acquisitions were obtained.

(f) **Transfer of exemption.** If a facility has initially qualified for an exemption on or after January 1, 1999, and ownership of the facility changes during the five-year period of the exemption, the exemption shall continue in effect for the balance of the five-year period, provided all qualification criteria set by statute are met by the new owners of the facility. Annual application for the exemption must be filed with the county assessor as required by statute. [**See:** 68 O.S.Supp.2003, § 2902(C)(1)]

710:10-7-4. Qualifying manufacturing concerns exempt; forms

Qualifying manufacturing concerns as defined by law shall be exempt from the levy of any ad valorem taxes upon new, expanded or acquired manufacturing facilities for a period of five (5) years. Exemptions will be allowed only upon approved application filed with the ~~County Assessor,~~ county assessor on forms prescribed by the Oklahoma Tax Commission. The application shall be fully completed, sworn to and signed by the applicant, if an individual, or by a duly authorized officer or general partner. Any additional information requested in writing by the ~~County Assessor~~ county assessor, the County Board of Equalization, or the Oklahoma Tax Commission shall be furnished in a sworn and signed statement.

710:10-7-5. Date of qualification; application for exemption

(a) The period of exemption granted to qualifying manufacturing concerns shall be computed from the assessment date immediately following the initial qualifying use of the property in the manufacturing process and subject to the statutory requirements for qualification in place at the time of the initial qualifying use. Applicants may claim any remaining eligibility not to exceed five years from the initial qualifying use.

(b) When completion of a facility or facilities will occur after January 1 of a given year, a facility may apply to claim the ad valorem tax exemption for that year. If the facility is found to be qualified, the exemption shall be available for the entire year and shall apply to the ad valorem valuation as of January 1st of that given year.

(c) Qualifying manufacturing concerns owning facilities engaged in manufacturing in Oklahoma on the first day of January may file an application for ad valorem manufacturing exemption on or before March 15, or as otherwise provided by law. Approved applications shall be filed by the county assessor with the Oklahoma Tax Commission no later that June 15 of the **TAX** year in which the facility desires to take the exemption. Incomplete applications and applications filed after said date will be declared null and void by the Commission. [**See:** 68 O.S. § 2902]

(d) If a taxpayer fails to file or timely file an initial application or any subsequent application for any year that the facility was otherwise qualified, the taxpayer may file an application for one (1) additional year within two (2) years past the end of the original five-year period. Qualified manufacturing concerns filing for the additional one (1) year must document the request and detail the specific circumstances by an attached addendum to the application at time of filing the application.

710:10-7-6. Beginning date of exemption; failure to claim

The five-year period of allowable ad valorem manufacturing exemption for any qualifying manufacturing facility property shall begin on January 1 following the initial qualifying use of the property in the manufacturing process as provided by law. Failure to claim an exemption for which a qualifying manufacturing concern may be eligible shall not toll or extend the five-year period of allowable exemption. Any remaining eligibility for previously acquired assets may be claimed for the following year based on the initial year of acquisition. Any qualifying manufacturing facility that fails to file or fails to file timely, may file an application for one additional year within two (2) years of the end of the original five-year period. Qualifying manufacturing concerns filing for the additional year must document the request and circumstances by an attached addendum to the application at time of filing.

710:10-7-10. Examination and inspection of property and records

Manufacturing facilities claimed for ad valorem manufacturing exemption, as well as facilities not claimed for exemption, in the case of expanded facilities, and all books, records and papers pertaining thereto, shall be made available by the owner for inspection by the ~~County Assessor~~ county assessor or ~~his~~ deputies, the County Board of Equalization, or authorized representatives of the Tax Commission. Failure or refusal by a property owner to allow inspection or to furnish all information requested or required within thirty (30) days from written notification, shall be reason for voiding the application for exemption, and the property shall be assessed from the best information available and the property owner shall be estopped from contesting the amount or validity of any assessment as to that property. [**See:** 68 O.S. § 2945]

710:10-7-11. County assessor to make initial determination of status; examination and valuation of the facility; notice upon rejection

(a) The ~~County Assessor~~ county assessor shall examine each application for the manufacturing exemption from ad valorem taxation and shall determine whether the facility is exempt under the law. In determining whether the exemption application is to be approved, the assessor shall, if necessary, make inspections, make a written request for additional information, or examine any person under oath as provided by law.

(b) The assessor shall complete the assessor's portion of each application, whether approved or rejected, and shall consecutively number each completed application received, whether approved or rejected, and shall immediately forward a copy of each application, whether approved or rejected, to the Oklahoma Tax Commission Ad Valorem Division. The original of each application, whether approved or rejected, shall be delivered to the County Board of Equalization, on or before the fourth Monday in April each year for its review.

(c) If the manufacturer's first year application is approved, the assessor shall mark the Notice of Approval or Disapproval (OTC Form 900 XMA-B) "**APPROVED**". It shall then be the duty of the Oklahoma Tax Commission to make a physical inspection of each facility approved for the exemption, determine the fair cash value of the real property, if necessary, and the personal property separately, and to determine the assessed value of each by applying the assessor's assessment percentage to that value. The Tax Commission shall then notify the ~~County Assessor~~ county assessor of the evaluation.

(d) If the county assessor finds that the exemption should not be allowed by reason of not being in conformity to the law, he shall mark the Notice of Approval or Disapproval (OTC Form 900 XMA-B) "**DISAPPROVED**", stating the reason for the disapproval, and shall notify the applicant at the address shown in the application. The notice shall be mailed on or before the fourth Monday in April. The assessor shall then immediately proceed to value and assess the property, as provided by law.

710:10-7-12. County Board of Equalization to review

The County Board of Equalization shall review each application for manufacturing exemption from ad valorem taxation in the same time and manner as provided for reviewing homestead exemptions and shall give written notice to the applicant if the board disallows an exemption which had been allowed by the county assessor. The notice shall state the reason for the rejection and the board shall forward a copy of the notice to the Oklahoma Tax Commission, on forms prescribed by the Tax Commission.

710:10-7-13. Hearings before County Board of Equalization

In case the ~~County Assessor~~ county assessor or County Board of Equalization disallows or rejects an application for a manufacturing exemption from ad valorem taxation, the applicant may obtain a hearing before the Board of Equalization by filing a written complaint with the Secretary of said Board (the ~~County Clerk~~ county clerk) within ten (10) days from the receipt of the notice. The complaint shall specify the grievances and the pertinent facts in relation the matter, and the County Board of Equalization shall conduct hearings, as provided by statute. [**See:** 68 O.S. § 2895]

710:10-7-14. Appeal from Board of Equalization to district court

The decision of the County Board of Equalization as to the exemption of a manufacturing concern from ad valorem taxation may be appealed to the District Court by either the applicant or the county assessor, as provided by law. [**See:** 68 O.S. § 2879]

710:10-7-15. Review; protest; appeal

(a) **Notice of erroneous exemption; assessment.** If the Tax Commission determines that an ad valorem manufacturing exemption has been erroneously or unlawfully granted to a manufacturing concern, in whole or in part, it shall notify the appropriate ~~County Assessor,~~ county assessor, who shall, after notice as required by law has been given, immediately value and assess the property and place the property on the tax rolls for Ad Valorem taxation. [**See:** Attorney General Opinion 03-16]

(b) **Notice to applicant.** The Tax Commission shall mail a copy of the notice pursuant to the terms of 68 O.S. § 208 to the applicant at the mailing address shown on the application. The copy shall notify the applicant of his right to protest the Commission's determination.

(c) **Protest.** Within sixty (60) calendar days after the mailing of the notice, the applicant may file with the Oklahoma Tax Commission, a written protest, under oath, signed by himself or his duly authorized representative, in the manner and subject to the requirements set out in 68 O.S. § 207 of the Uniform Tax Procedure Code. A copy of the protest shall be mailed or delivered by the applicant to the ~~County Assessor~~ county assessor.

(d) **Law governing protest procedure.** The Applicant's right of protest, hearing and procedure to be followed shall be governed by the provision of the Uniform Tax Procedure Code. [**See:** 68 O.S. §§ 201, et seq. and the Rules of Practice and Procedure before the Commission, promulgated at 710:1-5-20 through 710:1-5-48 of the **Oklahoma Administrative Code.**]

(e) **Appeal.** Appeals from the decision of the Oklahoma Tax Commission regarding any protest shall be made directly to the Supreme Court of Oklahoma, as provided by law. [**See:** 68 O.S. § 225]

710:10-7-16. County recording procedure for assessment and tax rolls; reimbursement payments

The county recording procedure will ~~be to~~ separately show each approved "exempt manufacturing" facility, which shall include exempt research and development facilities, in its proper place on each real or personal assessment and tax roll, as ~~if it were~~ other taxable property. Exempt property shall be

designated as "exempt manufacturing" property, the tax calculated, and charged to the county treasurer. The Treasurer **will not** bill the owner or post any public notice of delinquent or unpaid tax pursuant to the exemption. ~~because the~~ The tax for all "exempt manufacturing" property in the county will be ~~paid~~ reimbursed to the county treasurer by the State Treasurer ~~at~~ before the end of the fiscal year, or installment reimbursement payments if the Ad Valorem Reimbursement fund is insufficient to reimburse the full amount with one (1) payment, until the full amount is paid in full. All reimbursements will be based upon a county claim for reimbursement. ~~The current year's taxes will be reimbursed pursuant to 62 O.S. § 193.~~ [**See:** Attorney General Opinion 03-16 and 62 O.S. § 193]

710:10-7-17. Actual Fair cash value

The fair cash value used for exempt manufacturing personal property for ad valorem tax purposes will be the amount determined by the Oklahoma Tax Commission. The fair cash value used for exempt manufacturing real property may be determined by the ~~County Assessor~~ county assessor with the assistance of the Oklahoma Tax Commission.

710:10-7-22. Owner not billed for tax

The ~~County Treasurer~~ county treasurer shall not bill the owner of a manufacturing concern for the portion of ad valorem tax on "exempt manufacturing" property. The county treasurer shall send a copy of the tax bill to the Oklahoma Tax Commission Ad Valorem Division for notification purposes at the same time the tax bill would be otherwise sent to the taxpayer.

710:10-7-23. No late payment charges

No late payment interest or penalty on county reimbursements will be charged to the State by the County Treasurer. No late penalty or interest shall be charged to the applicant upon the disallowance by the county or the Oklahoma Tax ~~commission~~ Commission of any assets properly claimed on the application.

710:10-7-24. The county ~~Assessor's~~ assessor's report to the County Excise Board; abstract of assessment

The exempt manufacturing valuations shall be included in the ~~Assessor's~~ county assessor's Report to Excise Board (SA&I Form 263) and in the Annual Abstract of Valuation and Assessment (OTC Form 917), as for other properties.

710:10-7-25. County claim for reimbursement; funding shortfall

Manufacturers Tax exemption reimbursements are to have first priority before any other program utilizing the fund ear-marked for the **"Five-year Ad Valorem Tax Exemption for Oklahoma Manufacturers.** In the event of a shortfall of State funding, ~~County Treasurers~~ the county treasurer's would receive less than a full payment. In that event, the Oklahoma Tax Commission shall advise the County Treasurer of the proportion to be applied to each tax bill~~, and how to administer the shortfall~~. [**See:** Attorney General Opinion 03-16]

SUBCHAPTER 12. AGRICULTURAL LAND CONSERVATION ADJUSTMENT

710:10-12-1. Purpose

The provisions of this Subchapter have been adopted for the purpose of compliance with the Administrative Procedures Act, 75 O.S.~~Supp.1991~~, § 250 et seq, and to facilitate the administration, determination, and application of agricultural land conservation adjustments concerning ad valorem taxes.

710:10-12-4. Qualifying conservation land exempt; forms

Qualifying conservation land shall be defined by law. [**See:** 68 O.S.~~Supp.2000,~~ § 2817.2] Adjustments on applications prescribed by the Oklahoma Tax Commission will only be allowed pursuant to filing and approval of the ~~County Assessor~~ county assessor. The application must be fully completed, sworn to, and signed by the applicant. Any additional information requested in writing by the County Assessor, the County Board of Equalization, or the Oklahoma Tax Commission shall be furnished in a sworn and signed statement.

710:10-12-7. Method of valuation

(a) All agricultural land is to be valued according to the Oklahoma Constitution Article 10 Section 8 according to the actual fair cash value for its highest and best use. The Oklahoma statutes specifically outline the methodology as to use value for agricultural properties. [**See:** 68 O.S.~~Supp.1998,~~ § 2817(C)]

(b) The Oklahoma statutes make provision for valuation of certain designated conservation lands in 68 O.S.~~Supp.2000,~~ § 2817.2. For the purposes of this section qualified and approved conservation lands shall be valued using current approved use-value methodology presently in use for all other agricultural lands in the county based on the latest approved dollar-per-point from the Tax Commission. All Agricultural Conservation Land will be valued by classifying these lands at their current use classification as approved by the State Board of Equalization, and methodology developed by the Tax Commission. Land area may be rounded to the nearest tenth of an acre.

(c) These rules shall not be construed in a manner which is inconsistent with the State Board of Equalization's duties, powers, and authority as to equalization of valuation of the counties as determined and defined by Section 21 of Article 10 of the Oklahoma Constitution.

710:10-12-8. County Board of Equalization to review

The County Board of Equalization shall review each application for conservation land adjustment exemption in the same time and manner as provided for reviewing new homestead exemptions and shall give written notice to the applicant if the

board disallows an exemption. If an application is rejected, the applicant shall be notified in writing, and advised of the protest procedure as outlined in 68 O.S.~~1991,~~ §§ 2894, 2895.

710:10-12-9. Hearings before County Board of Equalization

In case the ~~County Assessor~~ county assessor or County Board of Equalization disallows or rejects an application for Conservation Land Adjustment, the applicant may obtain a hearing before the County Board of Equalization by filing a written complaint with the Secretary of said Board (the ~~County Clerk~~ county clerk) within ten (10) days from the receipt of the notice. The complaint shall specify the grievances and the pertinent facts in relation to the matter, and the Board shall conduct hearings, as provided by statute. [**See:** 68 O.S.~~1991~~, § 2895]

710:10-12-10. Appeal from Board of Equalization to district court

The decision of the Board of Equalization as to the conservation land adjustment may be

appealed to the District Court by either the applicant or the county assessor, as provided by law. [**See:** 68 O.S.~~1991~~, § 2879]

710:10-12-11. Review; protest; appeal

(a) **Notice of erroneous adjustment or; assessment.** If the Tax Commission determines that a Conservation Land Adjustment has been erroneously or unlawfully granted, in whole or in part, it shall notify the appropriate ~~County Assessor~~ county assessor, who shall immediately value and assess the property without the Conservation Adjustment.

(b) **Notice to applicant.** The Commission shall mail a copy of the notice pursuant to the terms of 68 O.S.~~Supp.1996,~~ § 208 to the applicant at the mailing address shown on the application. The copy shall notify the applicant of his right to protest the Commission's decision.

(c) **Protest.** Within thirty (30) calendar days after the mailing of the notice, the applicant may file with the Oklahoma Tax Commission, a written protest, under oath, signed by himself or his duly authorized representative, in the manner and subject to the requirements set out in 68 O.S.~~1991,~~ § 207 of the Uniform Tax Procedure Code. A copy of the protest shall be mailed or delivered by the applicant to the ~~County Assessor~~ county assessor.

(d) **Law governing protest procedure.** The Applicant's right of protest, hearing and procedure to be followed shall be governed by the provisions of the Uniform Tax Procedure Code. [**See:** 68 O.S.~~1991,~~ § 201, et seq. and the Rules of Practice and Procedure before the Commission, promulgated at 710:1-5-20 through 710:1-5-48 of the *Oklahoma Administrative Code.*]

(e) **Appeal.** Appeals from the decision of the Oklahoma Tax Commission regarding any protest shall be made directly to the Supreme Court of Oklahoma, as provided by law. [**See:** 68 O.S.~~1991,~~ § 225]

710:10-12-13. Actual Fair Cash Value

The use value used for the conservation land adjustment for ad valorem tax purposes will be the amount determined by the ~~County Assessor~~ county assessor with the assistance of the Oklahoma Tax Commission, if required. [**See:** 710:10-12-7]. In calculating the use value of Buffer Strips as defined in 68 O.S. § 2817.2, exclusive consideration shall be based only on income from production of agriculture from such Buffer Strips, not including federal or state subsidies, when valued as required by 68 O.S. § 2817.2(C).

710:10-12-20. County claim for reimbursement; funding shortfall

(a) The tax on "Conservation Land Adjustment" properties allowed ad valorem adjustment will be included on a County Claim for Reimbursement Form OSF-3 which will be filed by the County Commissioners by April 30, in the following year for reimbursement in June, of that same year, as provided by the law. [**See:** 62 O.S.~~1991,~~ § 193] Manufacturers ~~Tax~~ tax exemption reimbursements are to have first priority and additional homestead second priority before any other program utilizing the fund designated for the **"Five-year Ad Valorem Tax Exemption for Oklahoma Manufacturers".** In the event of a shortfall of State funding, ~~County Treasurers~~ county treasurers would receive less than a full payment. In that event, the Oklahoma Tax Commission shall advise the ~~County Treasurer~~ county treasurer of the proportion to be applied to each tax bill, and how to administer the shortfall.

(b) If the Ad Valorem Reimbursement Fund is insufficient to pay all claims, the claims will be paid proportionally from remaining funds. If no funds exist to pay any claims the claims are extinguished. (Ref: Ok AG Opinion 03-16).

SUBCHAPTER 14. FULL FAIR CASH VALUE EXEMPTION FOR DISABLED VETERANS IN RECEIPT OF COMPENSATION AT THE ONE HUNDRED PERCENT RATE

710:10-14-1. General provisions

(a) The procedures and requirements set out in this Subchapter shall be used to implement the exemption of the full fair cash value for homestead property of qualified owners for ad valorem purposes.

(b) The "one hundred percent disabled veterans exemption" refers to the implementation of the constitutional amendment added to the Oklahoma Constitution, Article 10, § 8E, by State Question 715, and is effective January 1, 2006. The amendment directs county assessors to exempt the total amount of the actual fair cash value of the homestead property of any qualified person who has made proper application. The applicant's property must be a valid homestead property, with evidence of a homestead exemption, or eligible for homestead exemption. As with any homestead-based exemption, the general statutes governing homestead exemption qualification apply to the one hundred percent disabled veterans exemption. Only one homestead, and by extension, only one exemption, is permitted

in any one year, per applicant. The exemption applies only to owner-occupied homestead property and may not be applied to any non-homestead property. [**See:** 68 O.S. §§ 2888, 2889, 2890, 2893]

710:10-14-3. Relationship to other exemptions and programs

Although the general law applies to applicants, since the ~~full~~ actual fair cash value is exempt from ad valorem tax for qualified applicants, applications for other homestead specific property tax exemptions are unnecessary.

710:10-14-5. Application

In order to be eligible for the one hundred percent disabled veterans exemption, the individual must apply at the county assessor's office by completing an **Application for 100% Disabled Veterans Property Tax Exemption, Oklahoma Tax Commission Form 998.** The application should be made between January 1 and March 15th in the same manner as for homestead exemptions. However, if the county assessor becomes aware of an otherwise-qualified applicant at any time during the current tax year, the county assessor may, upon compliance with all qualification criteria, make the appropriate adjustment. If an otherwise-qualified applicant is discovered after the tax roll has been certified, then a tax roll correction may be made pursuant to 68 O.S § 2871(C)(2). Any applications that are denied by the county assessor shall be subject to the same protest procedure as provided for homestead exemption. If the disability rating of any veteran participating in the exemption program is reduced by the U.S. Dept. of Veterans Affairs to less than one hundred percent, the veteran shall immediately notify the county assessor of the change in status. Failure to do so will result in loss of any future homestead exemption pursuant to 68 O.S. §§ 2892(K) and 2900.

710:10-14-6. Duties of the assessor

The county assessor has the authority to review any information provided by the applicant, ask any necessary questions, request documentation including, but not limited to: Military I.D., Veterans Administration benefits card, current Oklahoma Drivers License or any other information that the assessor may feel is relevant for the initial application or any time in subsequent years. The county assessor shall deny any application that is inaccurate, incomplete, inadequately documented, or otherwise invalid pursuant to this Subchapter.

[OAR Docket #06-1113; filed 5-26-06]

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

[OAR Docket #06-889]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Mixed Beverages
710:20-5-6. [AMENDED]
AUTHORITY:
68 O.S. § 203; 37 O.S. § 586; Oklahoma Tax Commission
DATES:
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March 10, 2006
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section **710:20-5-6** has been amended to conform with the provisions of Senate Bill 886, enacted into law by the 50th Legislature 1st Regular Session, effective June 6, 2005, which modified Section 576 of Title 37 of the Oklahoma Statutes, changing the due date for timely filing of monthly tax reports and paying gross receipts tax from the fifteenth day of the month to the twentieth day of the month. [37:576]
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. MIXED BEVERAGES

710:20-5-6. Due dates for timely filing of monthly tax reports and paying gross receipts tax

(a) **Date due.** On or before the ~~fifteenth (15)~~ twentieth (20) day of the calendar month immediately following the calendar month in which the mixed beverages were sold, prepared or served, the monthly gross receipts tax report and payment of

the tax due shall be submitted to the Oklahoma Tax Commission.

(b) **Date due not a working day.** If the due date is a Saturday, Sunday or a holiday recognized by the executive department of this State, then the due date shall be the next official working day for the Oklahoma Tax Commission immediately following the Saturday, Sunday or holiday.

(c) **Date mailed given effect.** Any report or payment mailed and postmarked by the United States Postal Service on or prior to the due date shall be considered to have been filed or paid on the due date.

(d) **Delinquency.** All such gross receipts tax or monthly reports due and not paid or submitted to the Commission on or before the due date shall be delinquent. [**See:** 37 O.S. § 579]

[OAR Docket #06-889; filed 5-10-06]

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

[OAR Docket #06-890]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. General Provisions
710:22-1-17. [AMENDED]
AUTHORITY:
68 O.S. § 203; 63 O.S. § 4004; Oklahoma Tax Commission
DATES:
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January 3, 2006 to February 2, 2006
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March 10, 2006
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section **710:22-1-17** has been amended to conform with the provisions of House Bill 1502 which provides that boats and outboard motors owned by the Oklahoma Department of Public Safety are to be registered free of charge. [63:4005]
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

710:22-1-17. State-owned boats or motors

Boats or outboard motors owned by the State of Oklahoma or its agencies, shall be registered for a fee prescribed by statute except for boats or outboard motors owned by the Oklahoma Department of Public Safety which shall be registered at no charge.

[OAR Docket #06-890; filed 5-10-06]

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

[OAR Docket #06-891]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
710:25-1-7. Special decals for limited use [AMENDED]
AUTHORITY:
68 O.S. §§ 203 and 1504; Oklahoma Tax Commission
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March 10, 2006
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section 710:25-1-7 has been amended to implement Section 16 of Senate Bill 905, enacted into law by the 50th Legislature 1st Regular Session, effective July 15, 2005, modifying Section 1503 of Title 68 of the Oklahoma Statutes, providing for periods based on calendar months and not "thirty-day periods" for special decals that are issued for a period of time less than one year.

CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

710:25-1-7. Special decals for limited use

In those instances where a coin-operated device will be available for use by the public for a limited period of time less than one (1) year, such as in connection with fairs, carnivals and places of amusements that operate only during certain seasons of the year, the Commission will issue a special decal for one or more ~~thirty (30) day periods~~ calendar months. The fee for each ~~thirty (30) day period~~ calendar month will be computed on the basis of one-tenth (1/10th) of the annual rate for the type of device operated. Each special decal must be firmly affixed, as defined by 710:25-1-1(b), to the device for which it is purchased, in the same manner as other decals, and may not be transferred to any other machine.

[OAR Docket #06-891; filed 5-10-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 35. ESTATES

[OAR Docket #06-1108]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Determination of Oklahoma Taxable Estate
Part 9. Deductions; Exclusions; Exemptions
710:35-5-64. Lineal heir exemption for assets of qualifying family farm or business [REVOKED]
AUTHORITY:
68 O.S. § 203; Oklahoma Tax Commission
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June 25, 2006
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Section 710:35-5-64 dealing with the lineal heir exemption for assets of a qualifying family farm or business has been revoked because no such exemption is allowed for the estate of a decedent who dies on or after January 1, 2001.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. DETERMINATION OF OKLAHOMA TAXABLE ESTATE

PART 9. DEDUCTIONS; EXCLUSIONS; EXEMPTIONS

710:35-5-64. Lineal heir exemption for assets of qualifying family farm or business [REVOKED]

~~(a) For deaths occurring on or after January 1, 1997, certain qualifying heirs shall be allowed an exemption of up to Four Hundred Twenty Five Thousand Dollars ($425,000) for the transfer of assets of qualifying family farm or business.~~

~~(b) "Qualifying heir" means father, mother, child, child of husband or wife, adopted child or any lineal descendent of decedent or of such adopted child.~~

~~(c) "Qualifying family business or farm" means any interest in an entity engaged in the trade or business of farming or in a trade or business other than farming. Provided, that some or all of the assets are held either by the decedent or collectively by a decedent and one or more of the qualifying heirs. Further, either the decedent or at least one qualifying heir of the decedent must have received wages from the business or farm or was subject to self-employment tax on the income from the business or farm on the date of death of the decedent.~~

~~(d) In the case of closely held family corporations, the decedent and not more than ten (10) qualifying heirs must have at least fifty percent (50%) combined voting power of all classes of stock entitled to vote and at least fifty percent (50%) of all other classes of stock of the corporation in order to qualify for this exemption.~~

~~(e) In order to qualify for this exemption, the estate of the decedent must also submit appropriate tax returns or tax schedules, showing continuous operation of the qualifying farm or business for the five (5) taxable years preceding the decedent's date of death. For purposes of this Section, "appropriate tax returns or tax schedules" means Federal and Oklahoma Income Tax Returns and supporting tax schedules which would serve to~~

~~substantiate the existence and continuous operation of a qualifying family farm or business during the requisite time period. (f) Furthermore, it is incumbent upon the qualifying family farm or business to continue the operations for at least five (5) years after the decedent's date of death. Such qualifying family business or family farm shall submit, under separate cover to the Estate Tax Section, copies of appropriate tax returns or tax schedules, as defined in subsection (e), as they are filed and at such time as they are filed with each respective agency. If the aforementioned returns are not submitted to the Estate Tax Section, the qualified heirs will be liable for twenty percent (20%) of the total estate tax, which would have been due had the business or farm not qualified for the exemption, for each year evidence of continuous operation is not submitted.~~

[OAR Docket #06-1108; filed 5-26-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 40. FRANCHISE TAX

[OAR Docket #06-892]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
710:40-1-17. Reporting form to be used by taxpayers exempt from tax as a result of a tax of $10.00 or less being due. [NEW]
AUTHORITY:
68 O.S. § 203 and 1210; Oklahoma Tax Commission
DATES:
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March 10, 2006
SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
New Section 710:40-1-17 has been adopted to clarify the filing requirements of corporations that owe $10.00 in franchise tax pursuant to the changes to 68 O.S. § 1205 made by House Bill 1738 which will become effective July 1, 2006.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

710:40-1-17. Reporting form to be used by taxpayers exempt from the tax as a result of a tax of $10.00 or less being due

For all franchise tax returns due on or after July 1, 2006, if a taxpayer computes the franchise tax due and determines that it amounts to $10.00 or less, the taxpayer is exempt from the tax and a "no tax due" report as prescribed by the Tax Commission is required to be filed. A schedule of corporate officers must still be filed and, for foreign corporations, the $100.00 registered agents fee is still due. [**See**: 68 O.S. § 1205]

[OAR Docket #06-892; filed 5-10-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 45. GROSS PRODUCTION

[OAR Docket #06-1105]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 9. Exemption and Exclusions
Part 5. Horizontally Drilled Production Wells
710:45-9-27. [AMENDED]
710:45-9-28. [AMENDED]
Part 7. Incremental Production from Enhanced Recovery Projects or Properties
710:45-9-32. [AMENDED]
Part 9. Production Enhancement Projects
710:45-9-42. [AMENDED]
710:45-9-43. [AMENDED]
Part 11. Reestablishment of Production from an Inactive Well
710:45-9-52. [AMENDED]
710:45-9-53. [AMENDED]
Part 13. Deep Wells
710:45-9-60. [AMENDED]
710:45-9-62. [AMENDED]
710:45-9-62.1. [AMENDED]
710:45-9-64. [NEW]
Part 15. New Discovery Wells
710:45-9-72. [AMENDED]
710:45-9-73. [AMENDED]
Part 17. Economically At-Risk ~~Oil~~ Leases [AMENDED]
710:45-9-80. [AMENDED]
710:45-9-81. [AMENDED]
710:45-9-82. [AMENDED]
710:45-9-83. [AMENDED]
710:45-9-84. [AMENDED]
Part 19. Production Using Three Dimensional Seismic Shoots
710:45-9-92. [AMENDED]
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68 O.S. § 203 and 1001(M); Oklahoma Tax Commission
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n/a
ANALYSIS:

Existing Sections 710:45-9-60; 710:45-9-62; 710:45-9-62.1 have been amended and New Section 710:45-9-64 has been adopted to conform to the provisions of House Bill 1588. 710:45-9-60 dealing with gross production tax refunds on certain deep wells was amended removing the limiting price cap on wells spudded between July 1, 2005 and July 1, 2008 when such wells are drilled to a depth of 15,000 feet or greater. 710:45-9-62 was amended regarding the priority to be given by the Oklahoma Corporation Commission when processing applications for qualification for the Deep Well exemption. 710:45-9-62.1 was amended to reflect the change in the refund procedure that operators of qualified wells must file their claim for refund on qualified deep wells within six (6) months after the first day of the fiscal year following the fiscal production period being claimed. 710:45-9-64 has been adopted to reflect the limitation on the total amount of refunds to be paid by the Tax Commission for the gross production tax exemption for certain Deep Wells.

Senate Bill 309 of the 50th Legislature, 1st Regular Session enacted statutory changes which require amendments to the existing rules to reflect statutory intent in the following areas:

Section 710:45-9-80 dealing with gross production tax exemption for economically at-risk oil leases has been amended to reflect the expanded exemption, which includes similarly situated gas leases. [68:1001.3a]

Section 710:45-9-81 modifies the definition of "lease" to provide that a lease may contain one or more wells which have identical interest and payout.

Section 710:45-9-82, which deals with the gross production tax exemption period for economically at-risk leases has been amended to reflect the limitation of this exemption to calendar years 2005, 2006, and 2007.

Section 710:45-9-83 dealing with the gross production tax exemption certification has been amended to delete the oil lease limitation.

Section 710:45-9-84 has been amended for clarification and to improve readability.

Several Sections in Subchapter 9, *Exemptions and Exclusions* have been amended consistent with changes in qualification procedures by the Oklahoma Corporation Commission regarding certain exemptions allowed in Section 1001 of Title 68.

CONTACT PERSON:
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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 9. EXEMPTIONS AND EXCLUSIONS

PART 5. HORIZONTALLY DRILLED PRODUCTION WELLS

710:45-9-27. Qualification procedure

The well operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall apply for qualification of the production from horizontally drilled wells, at the Oklahoma Corporation Commission on OCC Form 1534.

(1) OCC Form 1534 shall be completed in its entirety, and together with supporting documentation, shall be submitted to the Technical Services Department of the Conservation Division of the Oklahoma Corporation Commission for review.

(2) If the Department approves the application, ~~an order of the Oklahoma Corporation Commission shall be issued, and~~ a copy shall be forwarded to the operator.

(3) If the application is denied or refused, or approval is delayed beyond sixty (60) days, the applicant may seek review by application, notice and hearing.

710:45-9-28. Rebates - Refund procedure

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

(1) A copy of the application approved by the Corporation Commission ~~order~~ certifying the well as a horizontally drilled well;

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

(~~3~~2) A copy of an approved OTC Form 320A that shows the date of initial production;

(~~4~~3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and

(~~5~~4) If the refund request is filed by any person other than the party named in the ~~Oklahoma Corporation Commission order~~ application, a notarized affidavit, signed by the party named in the ~~order~~ application must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for prior periods.** Approval of a "Horizontal Drilling Incentive" for production periods prior to July 1, 2003, shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.

(c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to

qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

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

PART 7. INCREMENTAL PRODUCTION FROM ENHANCED RECOVERY PROJECTS OR PROPERTIES

710:45-9-32. Qualification procedures

The provisions of this Section establish criteria for determining if an operator of an enhanced recovery project or property has met the required conditions to qualify the incremental production from such project or property for the exemption from the Gross Production Tax. [**See:** 68 O.S. § 1001]

(1) ~~**Application to Oklahoma Corporation Commission;**~~ **Administrative approval and determination;** ~~**order.**~~ An operator, seeking an exemption of incremental production from the gross production tax shall make application to the Oklahoma Corporation Commission, as provided in OAC 165:5-7-14, for a determination that such project or property qualifies, a determination of the starting date, and of the base production amount.

(A) If the application is ~~administratively~~ approved, ~~an order of the Oklahoma Corporation Commission~~ a copy shall be ~~issued~~ forwarded to the operator.

(B) To obtain the tax exemption, the operator shall forward a copy of the ~~Oklahoma Corporation Commission order~~ approved application to the Oklahoma Tax Commission, together with any other data required by that agency.

(2) **Tax Commission approval of exemption.** An operator desiring an exemption from the gross production tax shall make application by letter to the Audit Division, Oklahoma Tax Commission. Such application shall be accompanied by:

(A) A copy of the approved application by the Corporation Commission ~~Order approving such application and~~ containing a determination of the project beginning date, base production amount and project payback;

(B) The ratio of working interest/royalty interest in the well. Only the incremental production attributable to the working interest owners shall be exempted from the gross production tax. For purposes of this exemption, overriding royalty shall be included in working interest;

(C) A schedule of production, by month, of the gross amounts of crude oil or other liquid hydrocarbons produced, and the gross values thereof, from the project beginning date until the date application is made to the Tax Commission; and,

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

PART 9. PRODUCTION ENHANCEMENT PROJECTS

710:45-9-42. Qualification procedure

The well operator or one of the working interest owners in the well, on behalf of the well operator and the other owners of the well, shall apply for qualification of the production enhancement project and incremental production, at the Oklahoma Corporation Commission on OCC Form 1534.

(1) OCC Form 1534 shall be completed in its entirety, and together with supporting documentation, shall be submitted to the Technical Services Department of the Conservation Division of the Oklahoma Corporation Commission for review.

(2) If the Department approves the application, ~~an order of the Oklahoma Corporation Commission shall be issued, and~~ a copy of the ~~order~~ approved application shall be forwarded to the operator.

(3) If the application is denied or refused, or approval is delayed beyond sixty (60) days, the applicant may seek review by application, notice and hearing.

710:45-9-43. Rebates - Refund procedure

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

shall state the reason for refund and the amount claimed and must be accompanied by the following:

(1) A copy of the application approved by the Corporation Commission ~~order~~ certifying the well as production enhanced;

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

(~~3~~2) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and

(~~4~~3) If the refund request is filed by any person other than the party named in the ~~Oklahoma Corporation Commission order~~ application, a notarized affidavit, signed by the party named in the ~~order~~ application must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for prior periods.** Approval of a "Production Incentive" for production periods prior to July 1, 2003, shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.

(c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

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

PART 11. REESTABLISHMENT OF PRODUCTION FROM AN INACTIVE WELL

710:45-9-52. Qualification procedure

The well operator or one of the working interest owners, on behalf of the well operator and the other owners of the well, shall apply for qualification of the well and production at the Oklahoma Corporation Commission on OCC Form 1534.

(1) OCC Form 1534 shall be completed in its entirety, and together with supporting documentation, shall be submitted to the Technical Services Department of the Conservation Division of the Oklahoma Corporation Commission for review.

(2) If the Department approves the application, ~~an order of the Oklahoma Corporation Commission shall be issued, and~~ a copy of the approved application shall be forwarded to the operator.

(3) If the application is denied or refused, or approval is delayed beyond sixty (60) days, the applicant may seek review by application, notice and hearing.

710:45-9-53. Rebates - Refund procedure

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

(1) A copy of the application approved by the Corporation Commission ~~order~~ certifying the well as an inactive well for which production has been reestablished;

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

(~~3~~2) A copy of an approved OTC Form 320C that shows the date of the reestablishment of production of oil and/or gas;

(~~4~~3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and

(~~5~~4) If the refund request is filed by any person other than the party named in the ~~Oklahoma Corporation Commission order~~ application, a notarized affidavit, signed by the party named in the ~~order~~ application must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for prior periods.** Approval of a "Reestablished Incentive" for production periods prior to July 1, 2003, shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.

(c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim

for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

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

PART 13. DEEP WELLS

710:45-9-60. Scope of Part 13

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

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

(c) **Exemption for wells spudded between July 1, 1994, and June 30, 1997, to a depth of fifteen thousand (15,000) feet or greater.** Deep wells spudded between July 1, 1994, and June 30, 1997, and drilled to a depth of fifteen thousand (15,000) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty-eight (28) months.

(d) **Exemption for wells spudded between July 1, 1997, and June 30, 2002, to a depth of twelve thousand five hundred (12,500) feet.** Deep wells spudded between July 1, 1997, and June 30, 2002, and drilled to a depth of twelve thousand five hundred (12,500) feet or greater shall be exempt from the gross production tax, beginning from the date of first sale, for a period of twenty-eight (28) months.

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

(1) **12,500 to 14,999 feet and spudded between July 1, 2002 and June 30, 2006.** The duration of the exemption for wells drilled to this depth is twenty-eight (28) months.

(2) **15,000 to 17,499 feet and spudded between July 1, 2002 and June 30, 2008.** The duration of the exemption for wells drilled to this depth is forty-eight (48) months.

(3) **17,500 feet or greater and spudded between July 1, 2002 and June 30, 2008.** The duration of the exemption for wells drilled to this depth is sixty (60) months.

710:45-9-62. Qualification procedure

The well operator or one of the working interest owners, on behalf of the well operator and the other owners of the well, shall apply for qualification of the well at the Oklahoma Corporation Commission on OCC Form 1534.

(1) OCC Form 1534 shall be completed in its entirety, and together with supporting documentation, shall be submitted to the Technical Services Department of the Conservation Division of the Oklahoma Corporation Commission for review.

(2) If the Department approves the application, ~~an order of the Oklahoma Corporation Commission shall be issued, and~~ a copy of the approved application shall be forwarded to the operator.

(3) If the application is denied or refused, or approval is delayed beyond sixty (60) days, the applicant may seek review by application, notice and hearing.

(4) When processing applications for qualifications for an exemption for Deep Wells as provided in this Section. The Oklahoma Corporation Commission shall give priority to those applications filed for an exemption pursuant to OAC 165:10-21-45(e)(2)and (3) in order for applicants to comply with the six-month filing period as provided for in Title 68 O.S. § 1001(H)(5).

(5) Claims for refund for deep wells spud on/or after July 1, 2005 which are completed at a depth of fifteen thousand (15,000) feet or greater and certified by the Oklahoma Corporation Commission must be filed with the Tax Commission no later than six (6) months after the first day of the fiscal year in which the refund is initially available.

710:45-9-62.1. Rebates - Refund procedure

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

(1) A copy of an application approved by the Corporation Commission ~~order~~ certifying the well as a well spudded within the applicable time periods and drilled to the prescribed depths provided in *OAC* 165:10-21-45;

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

(~~3~~2) A copy of an approved OTC Form 320A that shows date of first sale of production;

(~~4~~3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and

(~~5~~4) If the refund request is filed by any person other than the party named in the ~~Oklahoma Corporation Commission order~~ application, a notarized affidavit, signed by the party named in the ~~order~~ application must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for prior periods.** Approval of a "Deep Well Incentive" for production periods prior to July 1, 2003, shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.

(c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available. Claims for refund for deep wells spud on/or after July 1, 2005 which are completed at a depth of fifteen thousand (15,000) feet or greater and certified by the Oklahoma Corporation Commission must be filed with the Tax Commission no later than six (6) months after the first day of the fiscal year in which the refund is initially available.

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

710:45-9-64. Limitation on total amount of refunds paid by the Tax Commission

(a) For all wells spudded after July 1, 2005 which are exempt from gross production tax pursuant to paragraphs (2) and (3) of subsection (e) of Section 710:45-9-60, the amount of refund paid by the Tax Commission shall be limited as follows:

(1) For the fiscal year ending June 30, 2006, no claims for refund shall be paid,

(2) For the fiscal year ending June 30, 2007, the total amount of refunds paid shall be equal to or less than $17,000,000.00.

(3) For fiscal year ending June 30, 2008, the total amount of refunds paid shall be equal to or less than $20,000,000.00.

(4) For fiscal year ending June 30, 2009, and any fiscal year thereafter, the total amount of refunds paid each fiscal year shall be equal to or less than $25,000,000.00.

(b) In the event the total amount of claims for refund requested within the six month filing period July 1st through December 31st, for a fiscal year exceeds the total amount of refunds allowed for that fiscal year as provided for in this Section, the Tax Commission will proportionally reduce the amount of each claim so that the total amount of claims equal the total amount allowed for refunds.

(c) In the event the total amount of claims for refund filed within the six month filing period July 1st through December 31st, is less than the total amount of refunds allowed for that fiscal year, the Tax Commission will pay the claims that have been filed and extend the claims filing period for three additional months immediately following the expiration of the initial six month filing period until March 31st. If the total amount of claims for refund filed within the extended three month filing period is greater than the remaining funds, the Tax Commission will proportionally reduce the amount of each claim so that the total amount of claims equals the funds remaining to pay refund claims.

PART 15. NEW DISCOVERY WELLS

710:45-9-72. Qualification procedure

The well operator or one of the working interest owners, on behalf of the well operator and the other owners of the well, shall apply for qualification of the well at the Oklahoma Corporation Commission on OCC Form 1534.

(1) OCC Form 1534 shall be completed in its entirety and together with supporting documentation, shall be submitted to the Technical Services Department of the Oklahoma Corporation Commission for review.

(2) If the Department approves the application, ~~an order of the Oklahoma Corporation Commission shall be issued, and a~~ an approved copy shall be forwarded to the operator.

(3) If the application is denied or refused, or approval is delayed beyond sixty (60) days, the applicant may seek review by application, notice and hearing.

710:45-9-73. Rebates - Refund procedure

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

(1) A copy of the application approved by the Corporation Commission ~~order~~ certifying the well as a new discovery well spudded or re-entered between July 1, 1995 and June 30, 2006;

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

(~~3~~2) A copy of an approved OTC Form 320A that shows date of first sale of production;

(~~4~~3) A properly completed OTC Form 328 Gross Production 841/495 Refund Report; and

(~~5~~4) If the refund request is filed by any person other than the party named in the ~~Oklahoma Corporation Commission order~~ application, a notarized affidavit, signed by the party named in the ~~order~~ application must be filed, authorizing the applicant to apply for the refund.

(b) **No time limitation on rebate for prior periods.** Approval of a "New Discovery Incentive" for production periods prior to July 1, 2003, shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.

(c) **Documentation of required investment.** For production periods beginning on or after July 1, 2003, no refund shall be paid unless the person authorized to make the claim for refund on behalf of the aggregate owners and operator provides a written statement demonstrating that an amount has been invested which is equal to, or greater than the amount of the refund. The required investment in the exploration for, or production of, oil or natural gas in this state may be made by any individual or combination of aggregate owners and operators, but may not be based upon amounts invested prior to three years from the date of the claim. Any investment used to qualify for a rebate/refund pursuant to this Section shall not be used to qualify for any other refund/rebate.

(d) **Refund limited to interest owners of record and operators at time of qualifying act.** Only the operator and interest owners of record at the time of the qualifying act are eligible for the rebate of gross production tax attributable to their interest in the project.

(1) In the case of a change in the operator of a qualified project, it is permissible for the new operator to file the claim for refund on behalf of all participating interest owners for the prior and the current periods, although the new operator would not be eligible for any share in the refund.

(2) A former operator or interest owner may also file the claim for the periods in which the owner or operator actively participated in the project and distribute the appropriate refund amounts to the eligible interest owners.

(e) **Notice of changes in operator and interest owners.** Effective July 1, 2004, the person filing a claim for refund pursuant to this Section shall provide written notice of any changes in the operator or interest owners that have occurred in the project. Refunds shall be based solely upon the interest owners and operators in place at the time of the qualifying act.

(f) **Claim limitation.** For production periods beginning on or after July 1, 2003, no claim for rebate pursuant to 68 O.S. § 1001(L) shall be filed more than eighteen (18) months after the first day of the fiscal year in which the refund is initially available.

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

PART 17. ECONOMICALLY AT-RISK ~~OIL~~ LEASES

710:45-9-80. Scope of Part 17

Exemption from the levy of Gross Production Tax on economically at risk ~~oil~~ leases set out in 68 O.S.Supp.1999, Section 1001.3 shall be determined according to the provisions of this Part. [**See:** 68 O.S.Supp.1999, Section 1001.3(F)]

710:45-9-81. Definitions

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

"**Economically at risk oil lease**" means any lease operated at a net loss or a net profit which is less than the total gross production tax remitted for such lease during the previous tax reporting year.

"**Lease**" means a spaced unit, a separately metered formation within the spaced unit, or each tract within a Corporation Commission approved unitization, or a lease which, for tax reporting purposes, has been assigned a production unit number. A lease may contain one or more wells which have identical interest and payout.

"**Oil lease**" means a lease containing one or more wells which have identical interest and payout and which are either:

(A) Classified by the Oklahoma Corporation Commission as an oil well, OR

(B) The ratio of gas to oil produced from the lease is equal to or less than fifteen thousand (15,000) cubic feet of gas for each one (1) barrel of oil produced.

Note: The economically at risk rebate applicable to calendar years 1997 and 1998 only pertains to a qualified oil lease. The economically at risk rebate applicable to calendar years 2005, 2006 and 2007 pertains to both qualified oil and gas leases.

710:45-9-82. Exemption period

The exemption for economically at risk oil leases is limited to calendar years 1997 and 1998.~~The exemption shall not apply to any calendar years wherein the Commission records reflect that the weighted average price of oil produced and sold in Oklahoma exceed twenty five dollars ($25.00) per barrel.~~ The exemption for economically at risk oil and gas leases is limited to calendar years 2005, 2006 and 2007.

710:45-9-83. Certification

(a) **General provisions.** This Section establishes criteria for determining whether an operator of an economically at risk ~~oil~~ lease has met the required conditions to apply for an exemption from gross production tax levied on such and establishes a procedure for the issuance of the refund.

(b) **Application to Oklahoma Tax Commission; determination; approval.** Any operator who desires to make application to have ~~an oil~~ a lease certified as being economically at risk shall complete the appropriate OTC Form in its entirety and file it with the Commission. The application must be notarized and properly signed by the operator.

(c) **Formula used to determine if lease is economically at risk.** The application sets out the formula used to determine if a lease is economically at risk. This entails subtracting from the gross revenue from each lease for the previous calendar year, any severance taxes, royalty payments, and lease operating expenses, including expendable workover and recompletion costs for the previous calendar year, and overhead costs up to the maximum overhead percentage allowed by the Council of Petroleum Accountants Societies (COPAS). For purposes of this calculation, depreciation, depletion, and intangible drilling costs shall **not** be included in lease operating expenses.

(d) **Commission may require additional information.** For audit purposes, the Commission may require additional information, such as copies of the operators Federal Income Tax Return, joint interest billings, or other documentation regarding lease production or expenses.

(e) **Letter of determination issued by Commission.** Within sixty days from the date the application is filed, the Commission shall make its determination and shall issue, either an approval letter or denial letter, to the lease operator. If the exemption is denied, an explanation for the denial will be provided. The applicant may file an appeal under provisions of 68 O.S. Section 227, 228 and the Rules of this Commission.

710:45-9-84. Refund procedure

(a) **Issuance of refund.** Upon certification by the Commission, a refund ~~of 6/7th~~ of the gross production taxes paid in the previous calendar year for the lease shall be issued after July 1 of the subsequent year, to the well operator or a designee.

(b) **Assignment of a designee.** If the refund is to be issued to a party other than the recognized operator, a notarized affidavit, signed by the be operator must be submitted to the Commission authorizing the designee to receive the refund.

(c) **No time limitation on rebate for qualifying wells.** Approval of an "Economically at-Risk Oil Lease" shall not be time-barred by either the date of certification or the date of filing a claim for refund of the rebate of gross production tax.

PART 19. PRODUCTION USING THREE DIMENSIONALSEISMIC SHOOTS

710:45-9-92. Qualification procedure

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

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

(1) If the application is administratively approved, ~~an order of the Oklahoma Corporation Commission~~ a copy shall be ~~issued~~ forwarded to the operator.

(2) To obtain the tax exemption, the operator shall forward a copy of the ~~Oklahoma Corporation Commission order~~ approved application to the Oklahoma Tax Commission, together with any other data required by that agency pursuant to OAC 165:10-21-88.

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

[OAR Docket #06-1105; filed 5-26-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 50. INCOME

[OAR Docket #06-1110]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 15. Oklahoma taxable income
Part 3. Exemptions
710:50-15-33. [NEW]
Part 5. Other Adjustments to Income
710:50-15-48. [AMENDED]
710:50-15-49. [AMENDED]
710:50-15-50. [AMENDED]
710:50-15-66. [AMENDED]
Part 7. Credits against Tax
710:50-15-76. [AMENDED]
710:50-15-85. [AMENDED]
710:50-15-90. [AMENDED]
710:50-15-92. [AMENDED]
710:50-15-97. [NEW]
710:50-15-98. [NEW]
710:50-15-99. [NEW]
710:50-15-100. [NEW]
710:50-15-101. [NEW]
710:50-15-103 [NEW]
710:50-15-104. [NEW]
710:50-15-105. [NEW]
710:50-15-106. [NEW]
710:50-15-107. [NEW]
Subchapter 17. Oklahoma Taxable Income for Corporations
Part 1. General Provisions
710:50-17-3. [AMENDED]
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ANALYSIS:
New Section 710:50-15-33 has been adopted to implement the provisions of Section 6 of SB 1X which provides an exemption from taxable income in the amount of $1,000 for any eligible employer that utilizes the Safety Pays OSHA Consultation Service provided by the Oklahoma Department of Labor.

New Section 710:50-15-97 has been adopted to conform to the provisions of HB 1014 providing an income tax credit in the amount of fifty percent (50%) of the qualified direct costs associated with the operation of a business enterprise for which the principal purpose is the rearing of specially trained canines.

New Section 710:50-15-98 has been adopted to conform to the provisions of House Bill 1398 which provides for an income tax credit for certain biodiesel facilities.

Section 710:50-15-49 *Deduction for Retirement Income* has been amended to implement the provisions of House Bill 1476 which exempts the greater of 50% or $10,000 of military retirement income from Oklahoma income tax.

New Section 710:50-15-99 has been adopted to conform to the provisions of House Bill 1547 which provides for an income tax credit in the amount of fifty percent of the cost for the purchase or construction of dry fire hydrants for water storage with the primary purpose of fire protection within the State of Oklahoma.

Section 710:50-15-48 has been amended to implement the provisions of Section 12 of House Bill 1547 which modified the capital gain treatment for publicly traded partnerships, and extended the Oklahoma source capital gain exclusion to corporations.

Section 710:50-15-66 dealing with the Oklahoma College Saving Plan Deduction has been amended to conform to the provisions of Senate Bill 448 which capped the increased deduction per taxpayer at $10,000-$20,000 for those filing as married joint.

Section 710:50-15-92 has been amended to conform to the provisions of House Bill 1605 which increased the amount of the Advanced Wind Turbine Manufacturing credit to $25.00 per square foot produced in 2005 and extended the credit through calendar year 2007.

New Section 710:50-15-100 has been adopted to conform to the provisions of House Bill 1667 which provides for two income tax credits for certain qualified business enterprises incurring qualified capital expenditures, wage payments, or training costs.

Section 710:50-15-85 has been amended to conform to the provisions of House Bill 1680 which increases the cap of the Oklahoma Producer-Owned Agricultural Processing Credit for all credit claimers to $2 million and expands the definition of a qualifying entity to include Oklahoma based corporations and partnerships.

Section 710:50-15-90 dealing with the Oklahoma earned income tax credit has been amended to clarify policy on the proration of the credit.

New Section 710:50-15-101 was adopted to conform to the provisions of House Bill 1716 which provides for an income tax credit of twenty-five percent of the profit from the investment in an existing Oklahoma film or music project with a production company that is reinvested to pay for production costs for a new Oklahoma film or music project.

Existing Sections 710:50-15-49; 710:50-15-50; and 710:50-15-76; have been amended and New Section 710:50-15-103 has been adopted to conform to the provisions of Senate Bill 435. 710:50-15-49 *Deduction for Retirement Income* amendment concerns the increase in the exclusion for retirement benefits to $10,000. 710:50-15-50 amendment concerns the increase in the standard deduction for 2006 to $3,000 for taxpayers filing as married joint, head of household or surviving spouse ($2,000 for all others) which is also scheduled to increase to $4,000 for taxpayers filing as married joint, head of household or surviving spouse for tax year 2007. 710:50-15-76 adds the additional coal credit for coal mined after July 1, 2005. 710:50-15-103 implements Sections 7 and 8 of Senate Bill 435 which provided for a credit equal to 50% of an eligible taxpayer's [Class II or Class III Railroad] qualified rail reconstruction or replacement expenditures.

New Section 710:50-15-104 has been adopted to implement the provision of Senate Bill 610 which provides for an income tax credit for the construction of qualifying energy efficient residential property.

New Section 710:50-15-105 has been adopted to conform to the provisions of Senate Bill 628 which provides for an income tax credit for certain computer services, data processing or research and development activities.

New Section 710:50-15-106 has been adopted to implement the provisions of Senate Bill 429 [2003] which created a credit for certain ethanol production facilities and the provisions of House Bill 1556 which modified the credit by allowing the credit to be claimed against the bank in lieu tax and the tax on gross insurance premiums and also capped an annual amount of ethanol produced that is eligible for the credit.

New Section 710:50-15-107 has been adopted to implement the provisions of Sections 5 of Senate Bill 1X. Section 5 provides for an income tax credit of up to $5,000 per employee based on 10% of eligible gross wages paid for a 90-day period.

Section 710:50-17-3 *What constitutes "Nexus"* has been amended consistent with Commission decision. [2005-05-10-22]

CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 15. OKLAHOMA TAXABLE INCOME

PART 3. EXEMPTIONS

710:50-15-33. Exemption for employers participating in the Oklahoma Department of Labor Safety Pays Consultation Services

There is an annual deduction of One Thousand Dollars ($1,000.00) for employers who participate in the Oklahoma Department of Labor's Safety Pays Consultation Service effective for tax year 2006. Employers may claim the exemption of One Thousand Dollars ($1,000.00) on the appropriate Oklahoma income tax return. Employers must be able to substantiate their participation in the Oklahoma Department of Labor's Safety Pays Consultation Service upon request of the Oklahoma Tax Commission.

PART 5. OTHER ADJUSTMENTS TO INCOME

710:50-15-48. Oklahoma source capital gain deduction

(a) **General provisions.** For tax years beginning on or after January 1, 2005, individual taxpayers can subtract from the Oklahoma adjusted gross income, gains reported on their Oklahoma income tax return and included in federal taxable income receiving capital treatment. The gain must be realized on or after January 1, 2005, in order to be eligible for the Oklahoma exclusion. Effective for tax years beginning on or after January 1, 2006 corporate taxpayers can subtract from the Oklahoma taxable income, gains reported on their Oklahoma income tax return and included in federal taxable income receiving capital treatment. For corporate taxpayers the gain must be realized on or after January 1, 2006 in order to be eligible for the Oklahoma exclusion.

(b) **Qualifying gains receiving capital treatment.** As used in this Section, **"qualifying gains receiving capital treatment"** means the amount of net capital gains, as defined under Internal Revenue Code Section 1222(11), [IRC §1222(11)]. The gain must be included in the federal income tax return of the ~~individual~~ taxpayer.

(1) **Sale of real or tangible personal property.** To qualify for the Oklahoma deduction, the gain must be earned as a result of the sale of real or tangible personal property located within Oklahoma. ~~Individual taxpayers~~ Taxpayers must have held the asset for not less than five (5) uninterrupted years prior to the date of the transaction that created the capital gain.

(2) **Sale of stock or ownership interest.** To qualify for the Oklahoma deduction, the gain must be earned as a result of the sale of stock or ownership interest in an Oklahoma company, limited liability company, or partnership and the stock or ownership interest must have been held by the ~~individual~~ taxpayer for at least three (3) uninterrupted years prior to the date of the transaction that created the capital gain.

(3) **Sale of real or tangible personal property by pass-through entities.** Net capital gains earned by ~~an individual~~ member, partner, or shareholder of a pass-through entity as a result of the sale of real or tangible personal property located within Oklahoma, and included in the ~~individual's~~ a taxpayer's federal taxable income is excludable, provided that the ~~individual~~ taxpayer has been a member of the pass-through entity for an uninterrupted period of five (5) years and that the pass-through entity has held the asset for not less than five (5) uninterrupted years prior to the date of the transaction that created the capital gain.

(4) **Sale of stock or ownership interests by pass-through entities.** Net capital gains earned by a ~~an individual~~ member, partner, or shareholder of a pass-through entity as a result of the sale of stock or an ownership interest in an Oklahoma company, limited liability company, or partnership, is excludable, provided that the ~~individual~~ taxpayer has been a member of the pass-through entity for an uninterrupted period of three (3) years and that the pass-through entity has held the asset for not less than three (3) uninterrupted years prior to the date of the transaction that created the capital gain.

(5) **Installment sales.** Qualifying gains included in an individual taxpayer's federal taxable income for years after December 31, 2004, or a corporate taxpayer's federal taxable income for years after December 31, 2005, which are derived from installment sales are eligible for exclusion, provided the appropriate holding periods are met.

(c) **"Oklahoma company", "limited liability company", "partnership".** An Oklahoma company, limited liability company, or partnership is one whose primary headquarters has been located in Oklahoma for at least three (3) years prior to the capital gain transaction. The Oklahoma company, limited liability company, or partnership must meet the three (3) year rule for an uninterrupted period.

710:50-15-49. Deduction for retirement income

(a) **General provisions applicable to Oklahoma or federal government retirement income.** Each individual taxpayer may deduct up to Five Thousand Five Hundred Dollars ($5,500.00) of retirement benefits paid by the State of Oklahoma or by the federal government. Effective for tax years beginning on or after January 1, 2005, and ending before January 1, 2006, this deduction increases to Seven Thousand Five Hundred Dollars ($7,500.00). Effective for tax year 2006 and subsequent tax years the deduction increases to

Ten Thousand Dollars ($10,000.00). This deduction cannot exceed the amount included in the taxpayer's Federal Adjusted Gross Income. The total exclusion from all government retirement benefit plans may not exceed Five Thousand Five Hundred Dollars ($5,500.00), or for tax years beginning on or after January 1, 2005, Seven Thousand Five Hundred Dollars ($7,500.00), or for tax years beginning on or after January 1, 2006, Ten Thousand Dollars ($10,000.00), per individual.

(b) **Qualifying Oklahoma or federal government retirement income defined.** For purposes of this Section, "**Oklahoma or federal government retirement income**" means retirement income received from the following sources:

(1) The Civil Service of the United States;

(2) Any Component of the Armed Forces of the United States; [See special rule (g)]

(3) The Oklahoma Public Employees' Retirement System;

(4) The Oklahoma Teachers' Retirement System;

(5) Oklahoma Law Enforcement Retirement System;

(6) Oklahoma Firefighters' Pension and Retirement System;

(7) Oklahoma Police Pension and Retirement System;

(8) The Employee retirement systems created by counties pursuant to 19 O.S. §§951 et seq.

(9) The Uniform Retirement System for Justices and Judges;

(10) The Oklahoma Wildlife Conservation Department Retirement Fund;

(11) The Oklahoma Employment Security Commission Retirement Plan; or,

(12) The Employee retirement systems created by municipalities pursuant to 11 O.S. §§ 48-101 et seq.

(c) **Disability income; state and federal government retirees.** Disability retirement benefits received by an individual from sources listed in subsection (b) shall qualify for the retirement income deduction, without regard to the recipient's age.

(d) **General provisions for other retirement income.** Each individual taxpayer aged sixty-five (65) and over may deduct up to Five Thousand Five Hundred Dollars ($5,500.00) of other retirement benefits received and included in Federal Adjusted Gross Income through tax year 2004. Effective for tax years beginning on or after January 1, 2005, this deduction increases to Seven Thousand Five Hundred Dollars ($7,500.00) and the taxpayer is no longer required to be sixty-five (65) years of age. Effective for tax year 2006 and subsequent tax years the deduction increases to Ten Thousand Dollars ($10,000.00). This deduction cannot exceed the amount included in the taxpayer's Federal Adjusted Gross Income. The total exclusion from all retirement benefit plans may not exceed Five Thousand Five Hundred Dollars ($5,500.00) or, for tax years beginning on or after January 1, 2005, Seven Thousand Five Hundred Dollars ($7,500.00), or for tax years beginning on or after January 1, 2006, Ten Thousand Dollars ($10,000.00) per individual.

(1) **Income eligibility levels for tax years through 2004.** In order to qualify for this exclusion, Oklahoma Adjusted Gross Income cannot exceed Twenty Five Thousand Dollars ($25,000.00) for individuals using the filing status of "single, married filing separately, or head of household". For individuals using "married filing jointly or for qualifying widows" filing status, Oklahoma Adjusted Gross Income cannot exceed Fifty Thousand Dollars ($50,000.00) in order to qualify for the exclusion.

(2) **Income eligibility levels for tax year 2005 and subsequent years.** Effective for tax years beginning on or after January 1, 2005, Oklahoma Adjusted Gross Income cannot exceed Thirty Seven Thousand Five Hundred Dollars ($37,500.00) for individuals using the filing status of "single, married filing separately, or head of household". For individuals using "married filing jointly or for qualifying widows" filing status, Oklahoma Adjusted Gross Income cannot exceed Seventy Five Thousand Dollars ($75,000.00) in order to qualify for the exclusion.

(e) **"Qualifying other retirement income" defined.** For purposes of this Section "other retirement income" must be received from the following and satisfy the requirements of the Internal Revenue Code (IRC):

(1) An employee pension benefit plan under IRC Section 401;

(2) An eligible deferred compensation plan under IRC Section 457;

(3) An individual retirement account, annuity, or trust or simplified employee pension under IRC Section 408;

(4) An employee annuity under IRC Section 86; or,

(5) Lump-sum distributions from a retirement plan under IRC Section 402(e).

(f) **Disability income; private sector retirees.** Disability retirement benefits received by an individual shall qualify for the retirement income deduction, without regard to the recipient's age.

(g) **Special rule for retirement income from a component of the Armed Forces of the United States.** Effective for tax year 2006 and subsequent tax years, the deduction for retirement income from any component of the Armed Forces of the United States is the greater of Ten Thousand Dollars ($10,000.00) or fifty percent (50%) of the amount included in the taxpayer's Federal Adjusted Gross Income.

710:50-15-50. Deductions

(a) Oklahoma itemized deductions to income will be the same as Federal itemized deductions. In the event the standard deduction is used on the Federal Return, the Oklahoma standard deduction must be used.

(b) For tax year 2005 and prior, ~~T~~the standard deduction for Oklahoma is the larger of $1,000.00 or 15% of Oklahoma Adjusted Gross Income not to exceed $2,000.00 (if married filing separately, the larger of $500.00 or 15% not to exceed $1,000.00).

(c) For tax year 2006, taxpayers filing as married joint, head of household or surviving spouse will have a standard deduction for Oklahoma of $3,000.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of $2,000.

(d) For tax year 2007 and subsequent tax years, taxpayers filing as married joint, head of household or surviving spouse will

have a standard deduction for Oklahoma of $4,000.00. Taxpayers filing as single or married separate will have a standard deduction for Oklahoma of $2,000.

710:50-15-66. Deduction for contributions to an Oklahoma College Savings Plan

(a) For tax years beginning after December 31, 2001 and ending before December 31, 2004, individuals may deduct up to Two Thousand Five Hundred Dollars ($2,500.00) of contributions made to an Oklahoma 529 College Savings Plan Account, established pursuant to the Oklahoma College Savings Act, in arriving at Oklahoma taxable income. If contributions are made to more than one account, the deduction for each contributor is limited to Two Thousand Five Hundred Dollars ($2,500.00) for each account.

(b) Effective for tax years beginning after December 31, 2004, for contributions made to an Oklahoma 529 College Savings Plan (established pursuant to the Oklahoma College Savings Act) a maximum of Ten Thousand Dollars ($10,000,00) may be deducted in arriving at Oklahoma Taxable income [Twenty Thousand Dollars ($20,000.00) if filing an income tax return using married filing joint filing status].

(c) Contributions made to other states' college savings plans, the Coverdell Education Savings Account, or transfers from one Oklahoma College Savings Plan Account to another may not be deducted.

PART 7. CREDITS AGAINST TAX

710:50-15-76. Oklahoma coal credits

(a) **General provisions applicable to qualifying business entities purchasing Oklahoma-mined coal.** There shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for legal business entities purchasing Oklahoma-mined coal for qualifying purposes. In order to qualify for the Oklahoma Coal Credit, the business entity must either furnish water, heat, light, or power to the citizens or to the State of Oklahoma, or burn coal to generate heat, light, or power for use in manufacturing operations in Oklahoma. [**See:** 68 O.S.Supp.2002, § 2357.11; **Wyoming v. Oklahoma**, 112 S.Ct. 789 (1992)]

(1) **Basic credit.** For tax years beginning on or after January 1, 1993, and ending on or before December 31, 2007, the credit shall be Two Dollars ($2.00) per ton of Oklahoma-mined coal purchased.

(2) **Additional credit for large quantity purchasers.** For tax years beginning on or after January 1, 1995, and ending on or before December 31, 2007, there shall be allowed, in addition to the credit described in (1) of this subsection, a **supplemental** credit of Three Dollars ($3.00) per ton of Oklahoma-mined coal purchased. However, to obtain the credit described in this paragraph, purchases must total at least Seven Hundred Fifty Thousand (750,000) tons of Oklahoma-mined coal in the tax year for which credit is sought.

(b) **General provisions applicable to qualifying business entities that mine, produce, or extract coal.** There shall be allowed a credit against the tax imposed by Sections 1803 and 2355 of Title 68 or Sections 624 and 628 of Title 36 of the Oklahoma Statutes for every business entity in this state primarily engaged in mining, production, or extraction of coal, and holding a valid permit issued by the Oklahoma Department of Mines, **so long as** the average price of coal mined, produced, or extracted in any month for which credits are claimed is less than Forty-five Dollars ($45.00) per ton.

(1) **Basic credit.** For tax years beginning on or after January 1, 2001, the credit shall be Ninety-five Cents ($0.95) per ton of coal mined, produced, or extracted in this state, on or after January 1, 2001.

(2) **Additional credit for thin seam coal.** For tax years beginning on or after January 1, 2001, there shall be allowed, in addition to that described in (1) of this subsection, a **supplemental** credit in the amount of Ninety-five Cents ($0.95) per ton of coal mined, produced, or extracted from **thin seams** in this state, **so long as** the purchaser of the thin seam coal purchases less than Seven Hundred Fifty Thousand (750,000) tons of Oklahoma coal per year.

(3) **Extended credit for thin seam coal.** For tax years beginning on or after January 1, 2005, there shall be allowed, in addition to that described in (1) and (2) of this subsection, a **supplemental** credit in the amount of Ninety-five Cents ($0.95) per ton of coal mined, produced, or extracted from **thin seams** in this state on or after July 1, 2005.

(c) **Transferability.** The coal credits allowed, but not used, shall be freely transferable by written agreement to subsequent transferees, at any time during the five (5) years following the year of qualification.

(1) **"Eligible transferee" defined.** For purposes of this subsection, an **"eligible transferee"** means *any taxpayer subject to the tax imposed by Section 1803 or 2355 of Title 68 or Section 624 or 628 of Title 36 of the Oklahoma Statutes.* [**See:** 68 O.S.Supp.2002, § 2357.11(G)] Pursuant to the statutory definition, an "eligible transferee" taxpayer may be an individual, as well as a legal business entity.

(2) **Written transfer agreement requirements.** The business entity which originally earned the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring entity, and the tax year or years for which the credit may be claimed.

(3) **Claiming transferred credit.** A copy of OTC Form 572 must be attached to any tax return on which a taxpayer claims a transferred credit.

(d) **Application of credit election.** Any coal credit may, upon the election of the taxpayer, be claimed as a payment of tax, a prepayment of tax, or a payment of estimated tax for purposes of Section 1803 or 2355 of Title 68 or Section 624

or 628 of Title 36. In no event shall the credit reduce the tax below zero, and as such, this credit is non-refundable.

(e) **Carryover provisions.** Any coal credit, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability.

710:50-15-85. Credit for investment in Oklahoma producer-owned agricultural processing cooperative, venture, or marketing association

(a) **General provisions.** Oklahoma agricultural producers may claim an income tax credit for direct investment in an Oklahoma producer-owned agricultural processing entity which is designed to develop and enhance the production, processing, handling, and marketing of Oklahoma agricultural commodities. This credit will be available for the tax year in which the qualified investment is made.

(1) **For qualified investments made on or after January 1, 1997 but before December 31, 1998.** The credit for qualified investments will be thirty percent (30%).

(2) **For qualified investments made on or after January 1, 1999.** If the total credit allowed for qualified investments results in the reduction in total Oklahoma income tax of more than One Million Dollars ($1,000,000.00) in any previous calendar year, the percentage of the credit for qualified investment will be adjusted. The adjusted percentage allowable will be determined by multiplying thirty percent 30% times One Million Dollars ($1,000,000.00), then dividing the result by the credits claimed in the preceding calendar years.

(3) **For qualified investments made on or after January 1, 2006.** If the total credit allowed for qualified investments results in the reduction in total Oklahoma income tax of more than Two Million Dollars ($2,000,000.00) in any previous calendar year, the percentage of the credit for qualified investment will be adjusted. The adjusted percentage allowable will be determined by multiplying thirty percent (30%) times Two Million Dollars ($2,000,000.00), then dividing the result by the credits claimed in the preceding calendar years.

(b) **Definitions. "Qualified investment"**, for purposes of this Section, means and is limited to, direct investments by Oklahoma agricultural producers in Oklahoma producer-owned agricultural processing cooperatives, Oklahoma producer-owned agricultural processing ventures, ~~and~~ Oklahoma producer-owned agricultural processing marketing associations, and Oklahoma owned and based corporations and partnerships. [**See:** 68 O.S. Section 2357.25(F)]

(c) **Limitations.** Under no circumstances will the credit percentage exceed thirty percent (30%). If the credit should exceed the amount of income tax due, any unused credit may be carried forward and applied against subsequent income tax liabilities for a period not to exceed six (6) years. In the event of credits being carried forward, the amount of credit, once established, shall not be reduced in the event of credit percentage reduction in subsequent years. This credit shall not be available to any taxpayer in years in which claimant received incentive payments pursuant to the Oklahoma Quality Jobs Program Act or the Saving Quality Jobs Act.

(d) **Information return required.** Oklahoma producer-owned agricultural processing entities must file an information return, on a form prescribed by the Commission, reporting the amount of direct investment made during the preceding calendar year. The information return must be filed by January 31.

710:50-15-90. Oklahoma earned income tax credit

(a) Effective for tax years beginning on or after January 1, 2002, there shall be an Oklahoma Earned Income Tax Credit for resident and part year resident individuals.

(b) The Oklahoma Earned Income Tax Credit shall be an amount equal to five percent (5%) of the Federal Earned Income Tax Credit allowed under Section 32 of the Internal Revenue Code. The Oklahoma Earned Income Tax Credit may not be paid in advance and must be claimed on the individual income tax return when filed.

(c) The credit is to be prorated on the ratio that Oklahoma Adjusted Gross Income bears to Federal Adjusted Gross Income, not to exceed one hundred percent (100%). When the Oklahoma Adjusted Gross Income or the Federal Adjusted Gross Income are negative the ratio will be determined as follows:

(1) When the Oklahoma Adjusted Gross Income is negative and is less than the Federal Adjusted Gross Income, the ratio shall be 0%. (For example: Oklahoma Adjusted Gross Income is negative $1,000 and the Federal Adjusted Gross Income is negative $500, the ratio shall be 0%).

(2) When the Federal Adjusted Gross Income is negative and is equal to or less than the Oklahoma Adjusted Gross Income, the ratio will be 100%. (For example: Oklahoma Adjusted Gross Income is negative $500 and the Federal Adjusted Gross Income is negative $1,000 the ratio is 100%).

710:50-15-92. Credit for manufacturers of advanced small wind turbines

(a) **General provisions.** Oklahoma manufacturers of advanced small wind turbines may claim an Oklahoma income tax credit for manufacturing advanced small wind turbines in this state. This credit is available for advanced small wind turbines manufactured between January 1, 2003 and ~~December 31, 2005~~ December 31, 2007.

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

(1) **"Advanced small wind turbines (ASWT)"** are upwind, furling wind turbines that have a rated capacity of at least one kilowatt (1kw) but no more than fifty kilowatts (50kw). The wind turbine must also incorporate advanced technologies such as new airfoils, new generators, new power electronics, and variable speed. In order to qualify as an advanced small wind turbine, at least one unit of

each model must ~~be installed for~~ have undergone testing at the United States Department of Energy National Wind Technology Center and must comply with appropriate interconnection safety standards of the Institute of Electrical and Electronics Engineers as are applicable to small wind turbines.

(2) **"Rotor Swept Area"** means an area calculated by using the formula pi times D^2 divided by 4, (D being the rotor diameter in feet, pi = 3.1416).

(3) **"Oklahoma manufacturer"** means, for purposes of this Section, a manufacturer who operates facilities that have the capability of manufacturing small wind turbine products in this state.

(4) **"Small wind turbine products"** means and includes rotor blades and alternator fabrication.

(c) **Computation of the credit.** The credit is based on the square footage of the rotor swept area of the advanced small wind turbine manufactured in Oklahoma. For ASWT manufactured between January 1, 2003, and December 31, 2003, the credit is Twenty-five Dollars ($25.00) per square foot of the rotor swept area. For ASWT manufactured between January 1, 2004, and December 31, 2004, the credit is Twelve Dollars and Fifty Cents ($12.50) per square foot of the rotor swept area. For ASWT manufactured between January 1, 2005, and ~~December 31, 2005~~ December 31, 2007, the credit is ~~Six Dollars and Twenty-five Cents ($6.25)~~ Twenty-five Dollars ($25.00) per square foot of the rotor swept area.

(d) **Transfer of the credit.** Effective for tax year 2004, the credit for manufacturers of advanced small wind turbines may be transferred.

710:50-15-97. Credit for qualified direct costs of a business enterprise of specially trained canines

(a) **General provisions.** An Oklahoma Income Tax credit of fifty percent (50%) of the qualified direct costs associated with the operation of a business enterprise whose principal purpose is the rearing of specially trained canines is allowed. In order to qualify for the credit the business enterprise must meet certain eligibility requirements.

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

(1) **"Nonqualified operating expenditures"** means *labor costs, salary and other compensation, whether direct or indirect, paid to directors, officers, limited liability company members, limited liability company managers, partners or other principals or employees of the business entity* [68 O.S. § 2357.201(A)(1)];

(2) **"Qualified direct costs"** means *expenditures, other than nonqualified operating expenditures, to construct dog kennels, fences, pens, training areas for canines, structures for office space or other improvements to real property necessary for the proper training of a specially trained canine, including the cost of food, water, veterinary expenses and other costs directly related to the operation of the training facility* [68 O.S. § 2357.201(A)(2)]; *and*

(3) **"Specially trained canines"** means *dogs that are raised by a person who is officially licensed as a dog breeder by the United States Department of Agriculture.* [68 O.S. § 2357.201(A)(3)]

(c) **Qualification.** In order to qualify for the credit, applicant must have:

(1) An official copy of the United States Department of Agriculture dog breeder license; and

(2) Documentation showing that the business enterprise's principal purpose is the rearing of specially trained canines. Also, a written description of the services of the organization, as may be evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the business enterprise.

(3) Evidence of qualification must be provided to the Oklahoma Tax Commission upon request.

(d) **Computation of credit.** The taxpayer must attach a schedule showing qualified direct costs to the Oklahoma Income Tax Return. The allowed credit is equal to fifty (50%) of the "qualified direct costs". Receipts for all "qualified direct costs" must be provided to the Oklahoma Tax Commission upon request.

(e) **Limitations.** The credit will not reduce the tax liability of the taxpayer to less than zero (0) and any credit allowed but not used any tax year may be carried over, in order, to each of the five (5) subsequent taxable years. The credit is also not transferable.

710:50-15-98. Credits for biodiesel production

(a) **General provisions.** For tax years beginning after December 31, 2004 and before January 1, 2012, there is an income tax credit for biodiesel production at certain biodiesel facilities.

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

(1) **"Biodiesel"** is any diesel-equivalent biofuel made from renewable materials such as vegetable oils or animal fats.

(2) **"Biodiesel facility"** is a plant or facility primarily engaged in the production of biodiesel derived from animal fats, grain components, coproducts, or byproducts. The facility must be located within the State of Oklahoma.

(3) **"Name plate design capacity"** means the original designed capacity of a biodiesel facility. Capacity must be specified as gallons of biodiesel produced per year.

(c) **Basic credit.** Any biodiesel facility which is in production at the rate of at least twenty-five percent (25%) of its name plate design capacity for the production of biodiesel, on or before December 31, 2007 is eligible for a credit in the amount of twenty cents ($0.20) per gallon of biodiesel produced for the first sixty (60) months provided the biodiesel facility maintains an average production rate of at least twenty-five percent (25%) of its name plate design capacity for at least six (6) months after the first month for which it is eligible to receive such credit.

The credit of twenty cents ($0.20) per gallon of biodiesel produced expires for production after December 31, 2011.

(d) **Excess production credit.** Any biodiesel facility eligible for the basic credit above may also receive an income tax credit in the amount of twenty cents ($0.20) per gallon of biodiesel produced in excess of the original name plate design capacity which results from expansion of the facility completed on or after July 1, 2005 and before December 31, 2007. Such tax credit shall be allowed for sixty (60) months beginning with the first month for which production from the expanded facility is eligible to receive such tax credit and ending not later than December 31, 2011.

(e) **Credit for production after December 31, 2011.** For production of biodiesel after December 31, 2011 a biodiesel facility may receive an income tax credit in the amount of seven and one-half cents ($0.075) per gallon of biodiesel, for new production for a period not to exceed thirty-six (36) consecutive months.

(1) **"New production" defined.** For purposes of the credit for production after December 31, 2011, new production means production which results from a new facility, a facility which has not received credits prior to January 1, 2012, or the expansion of the capacity of an existing facility by at least two million (2,000,000) gallons first placed into service after January 1, 2012, as certified by the design engineer of the facility to the Oklahoma Tax Commission. For expansion of the capacity of an existing facility, new production is defined as the annual production that is in excess of twelve times the monthly average of the highest three (3) months of biodiesel production at a biodiesel facility during the twenty-four-month period immediately preceding certification of the facility by the design engineer. No credits are allowed under this subsection for expansion of the capacity of an existing facility until production is in excess of twelve times the three-month average amount determined under this subsection during any twelve-consecutive-month period beginning no sooner than January 1, 2012.

(2) **Credit approval.** The amount of a credit granted pursuant to this section that is based on new production must be approved by the Tax Commission based on the biodiesel production records as are necessary to reasonably determine the level of new production.

(f) **Limitations:** The credits allowed in this Section are subject to the limitations described in this subsection.

(1) The Credit for Biodiesel Production Facilities is only allowed for biodiesel that is produced at a plant at which all biodiesel esterification takes place.

(2) Not more than twenty-five million (25,000,000) gallons of biodiesel produced annually at a biodiesel facility shall be eligible for the basic credit or excess production credit. The credits may only be claimed by a producer for production that occurs on or before December 31, 2011.

(3) Not more than ten million (10,000,000) gallons of biodiesel produced during any twelve-consecutive-month period at a biodiesel facility shall be eligible for credit for production after December 31, 2011. The credit for production after December 31, 2011 may only be claimed by a producer for production that occurs on or before December 31, 2014.

(4) The Tax Commission may examine or cause to have examined, by any agent or representative designated for that purpose, any books, papers, records, or memoranda bearing upon such matters to ascertain the validity of the credit outlined in this section.

710:50-15-99. Dry fire hydrant credit

(a) **General provisions.** For tax years beginning after December 31, 2005, there is allowed a credit against the tax imposed by 68 O.S. Section 2355 for the cost of the purchase of a dry fire hydrant or the cost to provide an acceptable means of water storage for such dry fire hydrants including a pond, tank, or other storage facility with the primary purpose of fire protection within the State of Oklahoma.

(b) **Definitions. "Dry fire hydrant"** *means nonpressurized pipes permanently installed in lakes, farm ponds, and streams that provide a ready means of drawing water*.

(c) **Qualification.** In order to qualify for the credit, the dry fire hydrants or new water storage facilities must meet the following criteria:

(1) Each body of water or water storage structure must be able to provide two hundred fifty (250) gallons per minute for a continuous two-hour period during a fifty-year drought or freeze at a vertical lift of eighteen (18) feet for each body of water or water storage structure.

(2) Each dry fire hydrant must be located within twenty-five (25) feet of an all-weather roadway and accessible to fire protection equipment.

(3) Dry fire hydrants must be located at a reasonable distance from other dry or pressurized hydrants.

(d) **Certification.** The Oklahoma Tax Commission will receive certifications from The State Fire Marshall's Office. Allowed credits will be based on these certifications. The Taxpayer must attach a copy of the certification to the Oklahoma Income Tax Return.

(e) **Computation of credit.** Upon certification, the allowed credit shall be equal to fifty percent (50%) of the purchase price of a dry fire hydrant or the actual expenditure for the new water storage construction, equipment, development and installation of the dry hydrant or new water storage facility.

(f) **Limitations.** The amount of credit allowed pursuant to this Section shall not exceed $5,000.00 for each taxpayer and any credit allowed but not used in any tax year may be carried over, in order, to each of the four (4) years following the year of qualification.

710:50-15-100. Credit for qualified wages, capital expenditures, and training expenses

(a) **General provisions.** A refundable credit is available for qualified capital expenditures, wages and training expenses incurred by a business enterprise whose principal activity is either:

(1) data processing services, computer systems design services or other computer related services; or

(2) the manufacture of wing components for large commercial aircraft and other aerospace structures and components for commercial and government aerospace products.

(b) **Credit for data processing services, computer systems design services and other computer related services.** Effective for tax years beginning on or after January 1, 2006 and ending before January 1, 2009 the credit is equal to fifteen percent (15%) of the qualified business enterprises qualified capital expenditures, qualified wages and qualified training expenses as defined below. The credit is refundable and must be claimed by filing Oklahoma Tax Commission Form 580.

(1) **Definitions.** The following words and terms, when used regarding the credit for data processing services and other computer related services, shall have the following meaning, unless the context clearly indicates otherwise:

(A) **"Qualified business enterprise"** means an entity (or affiliated group of entities electing to file a consolidated Oklahoma income tax return):

(i) that is organized as either a corporation, partnership, limited liability company or other entity having limited liability pursuant to the laws of the state of Oklahoma or the laws of another state, if the entity is registered to do business within the state of Oklahoma, and

(ii) the principal business activities are described by the North American Industry Classification System (1997 edition) by Industry No. 514210, 541512 or 541519, and

(iii) that makes at least 75% of its sales to out-of-state customers or buyers determined in the same manner as provided for purposes of the Oklahoma Quality Jobs Program Act, and

(iv) that is a high-speed processing facility located in the state of Oklahoma that utilizes systems such as TPF, zTPF or other advanced technical systems, and

(v) maintained an Oklahoma annual payroll of at least $85,000,000.00 and an Oklahoma labor force of 1,000 or more persons on July 1, 2005.

(B) **"Qualified capital expenditures"** are those costs incurred by the qualified business enterprise for acquisition of tangible personal property that is used in the business operations within the state of Oklahoma that qualifies for either depreciation or amortization per the Internal Revenue Code of 1986, as amended. The property must be acquired during the taxable year for which the credit is being claimed. Capital expenditures as used in this section, also includes costs incurred to refurbish, repair or maintain any existing personal property located within the state.

(C) **"Qualified wages"** are compensation paid to full-time or part-time employees of the qualified business enterprise, including any employer-paid health care benefits, provided such employees are full-time residents of the state of Oklahoma.

(D) **"Qualified training expenses"** are those costs incurred to locate, interview, hire and educate an employee of the enterprise who has not previously been employed by the enterprise and who is a resident of the state.

(2) **Computation of the credit.** The maximum credit allowed for the Fiscal Year ending June 30, 2007 is Three Hundred Fifty Thousand Dollars ($350,000.00). The maximum credit allowed for the Fiscal Year ending June 30, 2008 is Three Hundred Fifty Thousand Dollars ($350,000.00). The maximum credit allowed for the Fiscal Year ending June 30, 2009 is Three Hundred Fifty Thousand Dollars ($350,000.00). No additional credits are allowed after this time period.

(c) **Credit for aircraft parts and auxiliary equipment manufacturers.** Effective for tax years beginning on or after January 1, 2006 and ending before January 1, 2009 the credit is equal to fifteen percent (15%) of the qualified business enterprises qualified capital expenditures, qualified wages and qualified training expenses as defined below. The credit is refundable and must be claimed by filing Oklahoma Tax Commission Form 581.

(1) **Definitions.** The following words and terms, when used regarding the credit for aircraft parts and auxiliary equipment manufacturers shall have the following meaning, unless the context clearly indicates otherwise:

(A) "**Qualified business enterprise"** means an entity:

(i) organized as a corporation, partnership, limited partnership, limited liability company, business trust or other entity, if such entity is registered to do business within the state, or is otherwise lawfully conducting business within the state, and

(ii) whose principal business activity in Oklahoma is described by the North American Industry Classification System (1997 edition) by Industry No. 336413 and is engaged in the manufacture of wing components for large commercial aircraft and other aerospace structures and components for commercial and government aerospace products, and

(iii) that makes at least 75% of its sales to out-of-state customers or buyers determined in the same manner as provided for purposes of the Oklahoma Quality Jobs Program Act .

(B) "**Qualified expenditures"** means:

(i) those costs incurred by the qualified business enterprise for acquisition of tangible personal property that is used in the business operations within the state of Oklahoma that qualifies for either depreciation or amortization per the Internal Revenue Code of 1986, as amended. The property must be acquired during the taxable year for which the credit is being claimed, or

(ii) any costs incurred during the taxable year to refurbish, repair or maintain any existing personal property located within the state whether or not such costs are capitalized by the taxpayer.

(C) **"Qualified wages"** are compensation paid to full-time or part-time employees of the qualified business enterprise, including any employer-paid health care benefits, provided such employees are full-time residents of the state of Oklahoma as of the time the services for which such qualified wages are received or are performed.

(D) **"Qualified training expenses"** are those costs incurred during the taxable year to locate, interview, hire and train employees and prospective employees of the qualified business enterprise who have not previously been employed as employees by the qualified business enterprise either full-time or part-time, at any time within the five prior taxable years and are full-time residents of the state as of the end of the taxable year for which the credit is claimed. The cost does not have to be deductible as a business expense pursuant to the Internal Revenue Code of 1986, as amended.

(2) **Computation of the credit.** The maximum credit allowed for the Fiscal Year ending June 30 2007 is One Hundred Fifty Thousand Dollars ($150,000.00). The maximum credit allowed for the Fiscal Year ending June 30 2008 is One Hundred Fifty Thousand Dollars ($150,000.00). The maximum credit allowed for the Fiscal Year ending June 30 2009 is One Hundred Fifty Thousand Dollars ($150,000.00). No additional credits are allowed after this time period.

710:50-15-101. Twenty-five percent (25%) Film and Music Profit Reinvestment Credit

(a) **General provisions.** There shall be allowed against the tax imposed by 68 O.S. § 2355, a credit equal to twenty-five percent (25%) of the profit from the investment in an existing Oklahoma film or music project with a production company to pay for production costs that is reinvested by the taxpayer with a production company for a new Oklahoma film or music project.

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

(1) **"Film"** means *a professional single media, multimedia program or feature, which is not child pornography as defined in subsection A of Section 1024.1 of Title 21 of the Oklahoma Statutes or obscene material as defined in paragraph 1 of subsection B of Section 1024.1 of Title 21 of the Oklahoma Statutes including, but 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;* [68 O.S. § 2357.101 (D)(1)]

(2) **"Music project"** means *a professional recording released on a national or international level, whether via traditional manufacturing or distributing or electronic distribution, using technology currently in use or future technology including, but not limited to, music CDs, radio commercials, jingles, cues, or electronic device recordings;* [68 O.S. § 2357.101 (D)(2)]

(3) **"Production company"** means *a person who produces film for exhibition in theaters, on television or elsewhere;* [68 O.S. § 2357.101(D) (3)]

(4) **"Production cost"** *includes, but is not limited to:*

(A) *wages or salaries of persons who have earned income from working on a film or music project in this state, including payments to personal services corporations with respect to the services of qualified performing artists, as determined under Section 62(a)(A) of the Internal Revenue Code,*

(B) *the cost of construction and operations, wardrobe, accessories and related services,*

(C) *the cost of photography, sound synchronization, lighting and related services,*

(D) the cost of *editing and related services,*

(E) *rental of facilities and equipment, and*

(F) *other direct costs of producing of a film or music project.* [68 O.S. § 2357.101(D) (4)]

(5) **"Profit"**, when used in reference to an eligible investment, means the actual profit received by the investor from the investor's investment in an existing Oklahoma film or music project.

(6) **"Reinvestment"** means the taxpayer invests twenty-five percent (25%) of the profit received from an existing Oklahoma film to pay for the production cost of the production company for a new Oklahoma film or music project.

(7) **"Existing Oklahoma film or music production"** means an existing Oklahoma Film or Music Project as determined by the Oklahoma Film or Music Office.

(8) **"New Oklahoma film or music project"** is a film or music project that has commenced production in Oklahoma after June 6, 2005 as certified by the Oklahoma Film or Music Office.

(c) **Eligibility requirements.** In order to qualify for the film and music production twenty-five percent (25 %) profit reinvestment tax credit, a film or music production company must first be approved by the Oklahoma Film and Music Office. After approval, the company may apply for the credit by submitting a completed Oklahoma Tax Commission Form 562 to the Oklahoma Tax Commission with their income tax return. Supporting documentation listed below must be provided to the Oklahoma Tax Commission upon request.

(1) A copy of the approval from the Film and Music Office.

(2) A copy of the final cost-accounting summary for the project with a breakout of Oklahoma costs for each line item.

(3) The name, address, social security number and amount paid to every resident of Oklahoma for whom the company wishes to claim credit for wages/salaries.

(4) Other documents that the Tax Commission may require ascertaining the validity of the credit.

(d) **Transferability.** The credit provided is not transferable.

710:50-15-103. Credit for qualified railroad reconstruction or replacement expenditures

(a) General provisions. For tax years beginning after 12/31/05 there is a credit allowed against the tax imposed by Section 2355 of Title 68 equal to 50% of an eligible taxpayer's qualified railroad reconstruction or replacement expenditures.

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

(1) **"Eligible taxpayer"** means any railroad that is classified by the United States Surface Transportation Board as a Class II or Class III railroad.

(2) **"Qualified railroad reconstruction or replacement expenditures"** means expenditures for reconstruction or replacement of railroad infrastructure. This includes track, roadbed, bridges, industrial leads and track-related structures owned or leased by a Class II or Class III railroad as of January 1, 2006. Qualified railroad reconstruction or replacement expenditures can also include new construction of industrial leads, switches, spurs and sidings and extensions of existing sidings by a Class II or Class III railroad.

(c) **Limitations.** The amount of the credit may not exceed the product of Five Hundred Dollars ($500.00) and the number of miles of railroad track owned or leased within this state by the eligible taxpayer as of the close of the taxable year.

(d) **Transferability.** The credits allowed pursuant to this Section that are not used are freely transferable by written agreement, to subsequent transferees, at any time during the five (5) years following the year of qualification.

(1) **"Eligible transferee" defined.** For purposes of this subsection, an **"eligible transferee"** shall be any taxpayer subject to the tax imposed by Section 2355 of Title 68.

(2) **Written transfer agreement requirements.** The person originally allowed the credit and the subsequent transferee must jointly file a copy of the written transfer agreement with the Commission, within thirty (30) days of the transfer. The written agreement must contain the name, address, and taxpayer identification number of the parties to the transfer, the amount of credit being transferred, the year the credit was originally allowed to the transferring person, and the tax year or years for which the credit may be claimed.

(e) **Carryover provisions.** Any credit allowed pursuant to the provisions of this Section, to the extent not used, may be carried over in order to each of the five (5) years following the year of qualification.

710:50-15-104. Credit for construction of energy efficient residential property

(a) **General provisions.** Effective for tax year 2006, a credit is available for contractors who construct either energy efficient residential property or energy efficient manufactured homes. The credit is dollar for dollar based on the cost of certain eligible expenditures.

(b) **Definitions.** For purposes of this Section, the following words and terms, shall have the following meaning, unless the context clearly indicates otherwise:

(1) **"Contractor"** is the taxpayer who actually constructed the residential property or manufactured home. In cases if more than one person qualifies as the contractor, the primary contractor.

(2) "**Eligible energy efficient residential property**" means a newly constructed residential property or manufactured home property located in the State of Oklahoma. Further the home cannot exceed two thousand (2,000) square feet in order to be eligible for the credit. The eligible energy efficient residential property must be substantially complete after December 31, 2005.

(3) **"Eligible expenditure"** includes the cost of energy efficient heating or cooling systems, insulation material specifically designed to reduce the heat gain or loss of a residential property, exterior windows, exterior doors or metal roofs with appropriate pigmented coatings designed to reduce the heat gain which meets Energy Star program requirements.

(4) "**Home energy ratings"** means a confirmed rating involving an on-site inspection of a home by a residential energy efficiency professional trained and certified by a Residential Energy Services Network accredited home energy rater.

(5) "**Residential energy services network provider"** means an accredited home energy inspector certified by Residential Energy Services Network.

(6) **"Residential property"** means a single dwelling unit, duplex, or townhouse with three stories or less, that provides independent living and could be sold or leased as separate property. The term does not include Group R-2 and R-4 residential buildings as defined in the International Energy Conservation Code.

(7) "**Substantially complete"** means the residential property or manufactured home has a certificate of occupancy issued if located in a municipality. For residential property or manufactured home in non-metropolitan area, the property will be substantially complete after passing the appropriate inspections required under the applicable County Building Codes permitted under 19 O.S. § 863.44.

(c) **Amount of credit.**

(1) The credit is capped at Four Thousand Dollars ($4,000) for those residential properties that are certified at forty percent (40%) or above of the International Energy Conservation Code 2003 and any supplement in effect at the time of completion. If the residential property is certified between twenty percent (20%) and thirty-nine (39%) of the International Energy Conservation Code of 2003 and any supplement in effect at the time of

completion, the credit is limited to Two Thousand Dollars ($2,000.00).

(2) The credit is not available if the residential property is in excess of Two Thousand (2,000) square feet.

(d) **Carryover provisions.** Any credit allowed pursuant to the Section, to the extent not used, may be carried over in order to each of the four (4) years following the year of qualification. However, at no time may the credit claimed exceed the tax liability.

710:50-15-105. Credit for research and development

(a) **General provisions.** For taxable years beginning after December 31, 1992, and before January 1, 2003, and for taxable years beginning after December 31, 2005, there is an income tax credit for a net increase in the number of full-time-equivalent employees of a qualifying computer services, data processing or research and development entity.

(b) **Definitions.** Qualifying computer services, data processing or research and development entities are those who are primarily engaged in computer services and data processing as defined under Industrial Group Numbers 7372, 7373, 7374 and 7375 of the SIC Manual (latest revision) and those entities which are primarily engaged in research and development as defined under Industrial Group Numbers 8731, 8732, 8733 and 8734 of the SIC Manual (latest revision).

(c) **Qualifications.** In order to qualify for the credit, entities primarily engaged in computer services and data processing (as defined under Industrial Group Number 7374 of the SIC Manual [latest revision] must also have a minimum of One Hundred Thousand Dollars ($100,000.00) in purchases of computers, data processing equipment, related peripherals, telephone, telegraph, or telecommunications service or telecommunications equipment. All qualified entities must derive fifty percent (50%) of revenues from out-of-state buyers or consumers. For purposes of determining whether annual gross revenues are derived from sales to out-of-state buyers or consumers, all sales to the federal government shall be considered to be sales to an out-of-state buyer or consumer. All qualified entities must also annually file an affidavit with the Oklahoma Tax Commission stating that the business so qualifies and such other information as required by the Commission.

(d) **Amount of credit.** The credit allowed is Five Hundred Dollars ($500.00) for each new employee, but in no event may the total annual credit exceed fifty new employees. The credit is allowed in each of the four (4) subsequent years only if the level of new employees is maintained in the subsequent year. However the credit is allowed in each of the eight (8) subsequent years only if the level of new employees is maintained in the subsequent year and if the credit is taken for taxable years beginning after December 31, 2005. *In calculating the credit by the number of new employees, only those employees whose paid wages or salary were at least Thirty-five Thousand Dollars ($35,000.00) during each year the credit is claimed shall be included in the calculation. The number of new employees shall be determined by comparing the monthly average number of full-time employees subject to Oklahoma income tax withholding for the final quarter of the taxable year with the corresponding period of the prior taxable year, as substantiated by such reports as may be required by the Tax Commission.*

(e) **Limitations.** This credit is not transferable. Unused credits may be carried over in order to each of the four (4) years following the year of qualification and to the extent not used in those initial four (4) years in order to each of the following five (5) years.

710:50-15-106. Credits for ethanol production

(a) **General provisions.** For tax years beginning after December 31, 2003 and before January 1, 2011, there is an income tax credit for ethanol production at certain ethanol facilities.

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

(1) **"Ethanol"** is a blend of gasoline and ethyl alcohol consisting of not more than fifteen percent (15%) ethyl alcohol by volume.

(2) **"Ethanol facility"** is a plant or facility primarily engaged in the production of ethanol or ethyl alcohol derived from grain components, coproducts, or byproducts. The facility must be located within the state of Oklahoma.

(3) **"Name plate design capacity"** means the original designed capacity of an ethanol facility. Capacity must be specified as gallons of ethanol produced per year.

(c) **Basic credit.** Any ethanol facility which is in production at the rate of at least twenty-five percent (25%) of its name plate design capacity for the production of ethanol, on or before December 31, 2008 is eligible for a credit in the amount of twenty cents ($0.20) per gallon of ethanol produced for the first sixty (60) months provided the ethanol facility maintains an average production rate of at least twenty-five percent (25%) of its name plate design capacity for at least six (6) months after the first month for which it is eligible to receive such credit. The credit of twenty cents ($0.20) per gallon of ethanol produced expires for production after December 31, 2010.

(d) **Excess production credit.** Any ethanol facility eligible for the basic credit above may also receive an income tax credit in the amount of twenty cents ($0.20) per gallon of ethanol produced in excess of the original name plate design capacity which results from expansion of the facility completed on or after the July 1, 2003 and before December 31, 2006. Such tax credit shall be allowed for sixty (60) months beginning with the first month for which production from the expanded facility is eligible to receive such tax credit and ending not later than December 31, 2010.

(e) **Credit for production after December 31, 2010.** For production of ethanol after December 31, 2010 an ethanol facility may receive an income tax credit in the amount of seven and one-half cents ($0.075) per gallon of ethanol before denaturing, for new production for a period not to exceed thirty-six (36) consecutive months.

(1) **"New production" defined.** For purposes of the credit for production after December 31, 2010, new production means production which results from a new facility, a facility which has not received credits prior to January 1, 2011, or the expansion of the capacity of an existing facility by at least two million (2,000,000) gallons first placed into service after January 1, 2011, as certified by the design engineer of the facility to the Oklahoma Tax Commission. For expansion of the capacity of an existing facility, new production is defined as the annual production that is in excess of twelve times the monthly average of the highest three (3) months of ethanol production at an ethanol facility during the twenty-four-month period immediately preceding certification of the facility by the design engineer. No credits are allowed under this subsection for expansion of the capacity of an existing facility until production is in excess of twelve times the three-month average amount determined under this subsection during any twelve-consecutive-month period beginning no sooner than January 1, 2011.

(2) **Credit approval.** The amount of a credit granted pursuant to this section that is based on new production must be approved by the Tax Commission based on the ethanol production records as are necessary to reasonably determine the level of new production.

(f) **Limitations:** The credits allowed in this Section are subject to the limitations described in this subsection.

(1) The Credit for Ethanol Production Facilities is only allowed for ethanol that is produced at a plant at which all ethanol fermentation, distillation, and dehydration takes place. No credit will be given for ethanol produced or sold for use in the production of distilled spirits.

(2) Not more than twenty-five million (25,000,000) gallons of ethanol produced annually at any single ethanol facility nor more than seventy-five million (75,000,000) gallons of ethanol produced annually at all ethanol facilities shall be eligible for the basic credit or excess production credit. The credits may only be claimed by a producer for production that occurs on or before December 31, 2010.

(3) Not more than ten million (10,000,000) gallons of ethanol produced during any twelve-consecutive-month period at any single ethanol facility nor more than thirty million (30,000,000) gallons produced annually at all ethanol facilities shall be eligible for credit for production after December 31, 2010. The credit for production after December 31, 2010 may only be claimed by a producer for production that occurs on or before December 31, 2013.

(4) The Tax Commission may examine or cause to have examined, by any agent or representative designated for that purpose, any books, papers, records, or memoranda bearing upon such matters to ascertain the validity of the credit outlined in this section.

710:50-15-107. Eligible wage and modification expenses credits

(a) **General provisions regarding credit based on wages.** Effective for tax year 2006 a credit of ten percent (10%) is available to employers based on wages paid for employees returning to work in restricted duties. The credit is based on eligible gross wages paid for a 90-day period. Eligible wages are those that are compensable under the Workers Compensation Act and are paid upon the employees return to work under restricted duty. The credit may not exceed five thousand dollars for any employee, and may not exceed twenty-five thousand dollars ($25,000) for any employer in a taxable year.

(1) **Definitions.** The following words and terms, when used regarding the eligible wage credit, shall have the following meaning, unless the context clearly indicates otherwise:

(A) "**Eligible wages**" are gross wages paid by an employer to an employee who is injured as a result of an injury which is compensable under the Workers' Compensation Act. The wages must be paid beginning when the employee returns to work with restricted duties as provided by the employee's treating physician or an independent medical examiner before the employee has reached maximum medical improvement. Wages paid after ninety (90) days or when the employee has reached maximum medical improvement are not eligible wages.

(B) **"Employee", "employer", "maximum medical improvement", "treating physician", and "wages"** shall be defined as in Section 3 of Title 85 of the Oklahoma Statutes.

(2) **Limitations.** The credit may not exceed five thousand dollars for any employee, and may not exceed twenty-five thousand dollars ($25,000) for any employer in a taxable year. This credit is not transferable.

(b) **General provisions for credit based on modification expenses.** Effective for tax year 2006 a credit of fifty percent (50%) is available for eligible modification expenses that enable an injured worker to return to work under restricted duty.

(1) **Definitions.** The following words and terms, when used regarding the credit based on modification expenses, shall have the following meaning, unless the context clearly indicates otherwise.

(A) "**Eligible modification expenses**" are expenses incurred by an employer to modify a workplace, tools or equipment or to obtain new tools or equipment which are incurred by an employer solely to enable a specific injured employee who is injured as a result of an injury which is compensable under the Workers' Compensation Act to return to work with restricted duties as provided by the employee's treating physician or an independent medical examiner before the employee has reached maximum medical improvement, and which workplace, tools or equipment are used primarily by the injured employee.

(B) **"Employee", "employer", "maximum medical improvement", "treating physician", and**

"wages" shall be defined as in Section 3 of Title 85 of the Oklahoma Statutes.

(2) **Limitations.** The credit may not exceed five thousand dollars ($5,000) for any employee, and may not exceed twenty-five thousand dollars ($25,000) for any employer in a taxable year. This credit is not transferable.

SUBCHAPTER 17. OKLAHOMA TAXABLE INCOME FOR CORPORATIONS

PART 1. GENERAL PROVISIONS

710:50-17-3. What constitutes "Nexus"

(a) If a corporation has one or more of the following activities in Oklahoma, it is considered to have **"nexus"** and shall be subject to Oklahoma income taxes:

(1) Maintenance of any business location in Oklahoma, including any kind of office.

(2) Ownership of real estate in Oklahoma.

(3) Ownership of a stock of goods in a public warehouse or on consignment in Oklahoma.

(4) Ownership of a stock of goods in the hands of a distributor or other non-employee representative in Oklahoma, if used to fill orders for the owner's account.

(5) Usual or frequent activity in Oklahoma by employee or representative soliciting orders with authority to accept them.

(6) Usual or frequent activity in Oklahoma by employee or representative engaged in a purchasing activity or in the performance of services (including construction, installation, assembly, or repair of equipment).

(7) Operation of mobile stores in Oklahoma (such as trucks with driver-salespersons), regardless of frequency.

(8) Other miscellaneous activities by employees or representatives in Oklahoma such as credit investigations, collection of delinquent accounts, conducting training classes or seminars for customer personnel in the operation, repair and maintenance of its products.

(9) Leasing of tangible property and licensing of intangible rights for use in Oklahoma.

(10) The sale of other than tangible personal property such as real estate, services and intangibles in Oklahoma.

(11) The performance of construction contracts or service contracts in Oklahoma.

~~(12) The delivery of merchandise in a company owned or leased vehicle to a destination within the state from a source outside the state, in connection with the solicitation of sales.~~

(b) The guidelines expressed in (a) of this Section as to what activities constitute "nexus" should not be considered all-inclusive. Questions may be sent to the Oklahoma Tax Commission, Audit Division, 2501 Lincoln Blvd., Oklahoma City, Oklahoma 73194.

[OAR Docket #06-1110; filed 5-26-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 55. MOTOR FUEL

[OAR Docket #06-1106]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 4. Motor Fuel Tax
710:55-4-103. [Amended]
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ANALYSIS:
Section 710:55-4-103 was amended to implement the provisions of Section 9 of Senate Bill 905 of the 50th Legislature, 1st Regular Session, which amended the requirements set forth in 68 O.S. § 500.23 for motor fuel vendors who apply for "eligible purchaser" status by deleting the requirement for a mandatory bond.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 4. MOTOR FUEL TAX

710:55-4-103. Election to be treated as an eligible ~~purcaser~~ purchaser

(a) **Qualification for eligible purchaser status.** Each person desiring to make an election to be treated as an eligible purchaser shall submit a request for approval. ~~Each purchaser holding a valid distributor's license on the effective date of this act will be granted eligible purchaser status.~~ The Tax

Commission will not approve an eligible purchaser request submitted by a non-vendor.

(b) **Amount of bond~~; exceptions to bond requirements.~~** If requested by the Tax Commission ~~T~~the bond for an eligible purchaser shall be in an amount not less than three (3) months estimated tax liability.

~~(c) **Exceptions to bond requirement.** Purchasers holding a valid distributor's license on the effective date of this act and who are in good standing, shall not be required to post a bond. All eligible purchasers not meeting the criteria set out in (d) of this Section shall be required to post the bond against uncollectible tax credits claimed by a supplier or by a bonded importer.~~

~~(d) **Definition of "good standing".** For purposes of this Section, "**good standing**" means that the purchaser has made timely remittances to the Tax Commission under its distributor's license for one (1) year prior to the date of application, and has not operated under the "**tax paid**" status within one (1) year of the date of application.~~

[OAR Docket #06-1106; filed 5-26-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 60. MOTOR VEHICLES

[OAR Docket #06-970]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Registration and Licensing
Part 3. Penalties
710:60-3-30. [AMENDED]
710:60-3-32. [AMENDED]
Part 11. Other Vehicles
710:60-3-112. [AMENDED]
Part 14. All Terrain Vehicles and Off-Road Motorcycles [NEW]
710:60-3-140. [NEW]
710:60-3-141. [NEW]
710:60-3-142. [NEW]
Part 15. Special License Plates
710:60-3-150. [AMENDED]
Part 19. Enforcement [REVOKED]
710:60-3-210. [REVOKED]
710:60-3-211. [REVOKED]
710:60-3-212. [REVOKED]
710:60-3-213. [REVOKED]
Subchapter 5. Motor Vehicle Titles
Part 5. Certificates of Title
710:60-5-53. [AMENDED]
Part 7. Transfer of Title
710:60-5-71. [AMENDED]
Part 9. Affidavits for Use in Titles
710:60-5-91. [AMENDED]
710:60-5-92. [AMENDED]
710:60-5-96. [AMENDED]
Part 11. Liens
710:60-5-116. [AMENDED]
Subchapter 7. Motor Vehicle Excise Tax
710:60-7-3. [AMENDED]
Subchapter 8. Rental Tax on Motor Vehicle Rentals
710:60-8-4. [AMENDED]
Subchapter 9. Motor Vehicle License Agents/Agencies
Part 9. Specific Fiscal Duties
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A New Part 14, dealing with all-terrain vehicles and off-road motorcycles has been added to Subchapter 3. Registration and Licensing. New Sections 710:60-3-140; 710:60-3-141; 710:60-3-142 have been adopted to conform to the provisions of House Bill 1297, effective July 1, 2005, which provides for mandatory titling and initial registration of all-terrain vehicles and off-road motorcycles for which legal ownership is transferred on or after July 1, 2005. **[47:562/47:1102/47:1105/47:1107.2/47:1113/47:1115.3/47:1132/47:1151/68:2102-2**

Existing Sections 710:60-3-210; 710:60-3-211; 710:60-3-212; 710:60-3-213 have been revoked consistent with the provisions of Senate Bill 141, 49th Legislature, 2d Regular Session (2004) which transferred from the Tax Commission certain motor vehicle enforcement duties and functions to the Corporation Commission.

Existing Section 710:60-3-150 has been amended to clarify policy in conformity with existing statutory authority and specifically with the provisions of Section 6 of Senate Bill 507 which authorizes the Tax Commission to design and issue special license plates to any person that applies to the Commission for the creation of a special license plate and meets the minimum standards and qualifications set forth in Section 6. **[47:1135.1-1135.6]**

Existing Section 710:60-5-53 has been amended to implement the provisions of Senate Bill 461 which provides that the notice requirements for insurance companies that pay a claim for a loss where the cost of repairing the vehicle for safe operation on the highway exceeds 60% of the vehicle's market value shall be expanded to include the estimate total damage percentage of the actual cash value. **[47:1111(L)]**

Existing Section 710:60-5-71 has been amended to implement the provision of Section 6 of House Bill 1547 which provides for a written notice of transfer that may be filed with the Tax Commission or a motor license agent. **[47:1107.4]**

Existing Section 710:60-5-116 has been amended to implement the provisions of Senate Bill 835 which addressed the acquisition process for vehicle certificates of title, commonly known as "Title 42s", to provide that special liens on personal property other than farm equipment, are subordinate to any perfected security interest unless certain specific conditions are met. **[42:91]**

Existing Section 710:60-7-3 has been amended to implement the provisions of Senate Bill 435 which enacted a vehicle excise tax exemption for certain disabled veterans. [68:2105]

Existing Sections 710:60-3-30; 710:60-3-32; 710:60-3-112; 710:60-5-91; 710:60-5-92; 710:60-5-96; 710:60-9-95 have been amended to clarify policy, simplify procedures, and streamline the required documentation in certain areas.

CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. REGISTRATION AND LICENSING

PART 3. PENALTIES

710:60-3-30. New vehicles purchased by Oklahoma residents

(a) **General provisions.** The maximum penalty allowed by statute is assessed after thirty (30) days from assignment on all vehicles, except manufactured homes, commercial trucks, tractors, and trailers.

(b) **Manufactured homes; commercial trucks and truck tractors.** Manufactured homes, commercial trucks and commercial truck tractors, are assessed a penalty equal to the registration fee less the administrative fee, if not registered within thirty (30) days from the assignment date.

(c) **No penalty on initial registration of commercial trailers.** There is no late registration penalty on the initial registration of a commercial trailer in this state. Penalties do apply, however on the registration fee due upon transfer of ownership and on excise tax.

(d) **Due dates which fall on ~~nonbusiness~~ non-business days.** A waiver may be granted if the 30th day falls on a Saturday, Sunday or a holiday and the vehicle is registered on Monday, or on the next regular business day following a holiday.

710:60-3-32. Used vehicle brought in by owner moving to Oklahoma

(a) When the owner of a vehicle becomes employed in this state, the vehicle is deemed to be subject to tax in this state and, within thirty (30) days from the date of employment, shall be registered in this state upon the same terms and conditions that resident owners are required to register such vehicles in this state. However, the owner of a vehicle who is employed in this state and commutes daily from an adjoining state shall be exempt from the provisions in this section.

(b) When an out-of-state title or registration is presented in application for an Oklahoma title by an owner whose name(s) is (are) reflected on that out-of-state title or registration with an Oklahoma address, proof of former residency in that other state may be required. If a title issued by a federally recognized Indian Tribe is presented, proof of membership in the issuing tribe will be required. If out-of-state residency/tribal membership cannot be verified, delinquent registration fees and penalties will be assessed.

(1) Examples of out-of-state residency verification: Out-of-state driver license; Voter registration card; Tax return (property or income); Utility bills in the name of the vehicle owner.

(2) Examples of Indian Tribal membership verification: Identification card or certificate of tribal membership issued by tribe; Bureau of Indian Affairs (BIA) identification card; Letter from tribe verifying membership.

(c) The penalty for failure to register the vehicle in the manner provided shall be an amount equal to the registration fee less the administrative fee.

PART 11. OTHER VEHICLES

710:60-3-112. Tax exempt license plates

(a) **Classifications.** Tax exempt tags are divided into two categories:

(1) **Nonrenewable.** Nonrenewable license plates are issued to political subdivisions of the State. They are classified as State, Oklahoma Highway Patrol, Oklahoma Military Department, and volunteer fire departments organized under Title 18 of the Oklahoma Statutes, which are issued directly by the Oklahoma Tax Commission free of charge. Other classification types are County, City, and School. Each of these groups has a distinctive tag with a distinctive prefix. A yearly validation decal will not be issued with these types of exempt tags as they are nonrenewable and nontransferable (unless transferring to same type of exempt entity). All other nonrenewable exempt plates listed in this paragraph have an initial fee as set forth by statute.

(2) **Renewable.** All other tax exempt organizations are issued renewable license plates. These tags are designated by an "E" prefix and must be renewed annually, for a fee set forth by statute, plus an insurance verification fee.

(b) **Display of exempt organization.** All tax exempt organizations, with the exception of political subdivisions of the State (State, County, City and School) and organizations which are prohibited from such displays, must have the name or symbol of the tax exempt or nonprofit organization prominently displayed on both sides of the vehicle in letters not less than 2 inches high and 2 inches wide and of such shape and color as to be readily legible during daylight hours from a distance of fifty (50) feet while the vehicle is not in motion.

(c) **Display not required when prohibited by law.** The Statute provides for a waiver of the sign requirement if such a display is prohibited by federal or state law or by state agency rules and regulations.

(d) **Affidavit of tax exempt registration.** An "Affidavit for Tax Exempt Registration" (OTC Form 701-29) must be completed by the vehicle registrant. On the affidavit, the registrant must indicate, by marking the ~~appropriate box,~~ specific statutory vehicle registration exemption applicable to

their organization and confirm that the exempt vehicle either meets the sign requirements, or that the sign requirement is inapplicable because of a federal or state law or regulation. If the latter situation is indicated, a photocopy of the applicable federal or state law or state agency rule and regulation must be submitted. ~~Vehicles exempt~~ Tax exempt organizations statutorily exempted from the sign requirement ~~described in Title 47, Section 1136 will~~ are not ~~be~~ required to complete ~~an~~ the signage verification portion of the "Affidavit ~~for Tax Exempt Registration~~".

PART 14. ALL-TERRAIN VEHICLES AND OFF-ROAD MOTORCYCLES

710:60-3-140. All terrain vehicles and off-road motorcycles

(a) **Title and registration requirement.** All terrain vehicles (ATV's) and off-road motorcycles (ORM's) purchased, or on which ownership is transferred, on or after July 1, 2005 are required to be titled and registered.

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

(1) **All Terrain Vehicles (ATV's).** A motorized vehicle manufactured and used exclusively for off-highway use which is sixty (60) inches or less in width, with an unladen dry weight of one thousand five hundred (1,500) pounds or less, traveling on two or more low-pressure tires.

(2) **Off-Road Motorcycles (ORM's).** A motorcycle used exclusively off roads or highways in this state. Small street or sidewalk mini-motorcycles or scooters are not included in this category.

710:60-3-141. Titling of all terrain vehicles and off-road motorcycles.

(a) **General.** Only standard type titles, as referenced under 710:60-5-2, will be issued to ATV's or ORM's.

(b) **Information or processes not required.** The following do not apply to ATV's or ORM's:

(1) Salvage, Rebuilt and Junk title issuance or procedures

(2) Odometer disclosure requirements

(3) Out-of-state vehicle V.I.N. / Odometer inspection & Declaration of Damage or Theft

(4) Liability insurance verification

(5) Submission by owner of driver's license number or federal employer's identification number

(6) Payment of waste tire fee at time of initial registration.

(c) **New ATV's or ORM's. Titling documents required if purchased on or after July 1, 2005.**

(1) A properly assigned Manufacturer's Statement of Origin (MSO), or other acceptable ownership document as determined by the Oklahoma Tax Commission.

(2) Completed Application for Oklahoma Title (701-6).

(3) A dealer invoice or other acceptable purchase price documentation, as determined by the Oklahoma Tax Commission.

(d) **Used or new ATV's or ORM's purchased prior to July 1, 2005. Titling documents required.**

(1) Assigned title/MSO; or

(2) A completed Ownership Affidavit (OTC form 753) and a bill of sale listing the purchase price, or a completed Declaration of Vehicle Purchase Price (OTC Form 722-1). In this application, the bill of sale is not required to be notarized, nor is OTC approval required of the Ownership Affidavit.

(e) **Exemptions from titling.** Holders of agricultural exemption permits issued pursuant to 68 O.S. § 1358.1 are exempt from ATV and ORM titling requirements. Such permit holders may transfer ownership of ATV's or ORM's by bills of sale. Should a permit holder choose to obtain title to an ATV or ORM, no excise tax is to be assessed. Titling and registration fees will apply.

(f) **Chain of title ownership not required.** Since agricultural permit holders are exempt from ATV or ORM titling requirements, there may be breaks in the title chain of ownership. As a result, there is no requirement that an assigned Oklahoma title be presented to transfer ownership of an ATV or ORM, provided documentation outlined in (d) above is submitted, even when an Oklahoma title record for a previous owner exists.

(g) **Excise tax assessment and exemptions.**

(1) **Assessment.** As set forth by statute, excise tax is to be assessed on new and used ATV's and ORM's purchased on or after July 1, 2005. Excise tax will be assessed on the actual purchase price presented by the purchaser, excluding credit for any trade in, either from a bill of sale or a Declaration of Vehicle Purchase Price (OTC form 722-1).

(2) **Exemptions.** Standard vehicle excise tax exemptions, outlined in OAC 710:60-7-3(b), apply to ATV's and ORM's. In addition, agricultural permit holders are exempt from excise tax, when choosing to title and register their ATV or ORM, upon presentation of a valid agricultural permit.

(h) **Lien filing.** Lien filing procedures on ATV's and ORM's are generally identical to vehicle lien filings referred to in Subchapter 5 Part 11 of the Oklahoma Tax Commission Rules Title 710, Chapter 60. Liens on ATV's or ORM's may be filed with only an Ownership Affidavit as supporting ownership documentation.

710:60-3-142. Registration of all terrain vehicles and off-road motorcycles.

(a) **General.** A registration fee as set forth by statute is assessed upon issuance of every original or transfer title to an ATV or ORM. Upon payment of the registration fee, an ATV or ORM decal will be issued to be affixed in clear view to the front of the ATV or ORM, or to the front fork of the ORM. Renewal of the registration by the same owner is not required. The registration fee is assessed again only upon any transfer of ownership.

(b) **Exceptions to registration.** The following persons are excepted from the registration requirements of this Section.

(1) **Licensed dealers.** Effective November 1, 2005, new ATV and ORM retailers must be licensed as dealers through the Oklahoma Motor Vehicle Commission. Oklahoma dealer assignments of ATV's and ORM's must have a Motor Vehicle tax stamp affixed, as outlined in OAC 710:60-5-72.

(2) **Agricultural exemption permit holders.** Owners possessing a valid agricultural exemption permit issued pursuant to 68 O.S. § 1358.1.

(c) **Optional Registration.** The following owners shall have the option of purchasing a nonrecurring registration.

(1) Owners that possess valid agricultural permits issued pursuant to 68 O.S. § 1358.1

(2) Owners of ATV's and ORM's, purchased prior to July 1, 2005.

PART 15. SPECIAL LICENSE PLATES

710:60-3-150. Special license plates~~, general provisions~~

(a) **General provisions.** Applications for ordering all types of personalized and special license plates, authorized ~~pursuant to the provisions of 47 O.S. §§ 1135.1 - 1135.6,~~ by statute, may be obtained from the Oklahoma Tax Commission or from ~~a local~~ any motor license agency.

(b) **Leased vehicles.** An eligible individual leasing a vehicle may make application for any special tag or registration rate. A copy of the lease agreement, listing the applicant as lessor, must be submitted and attached to the Oklahoma Tax Commission copies of the paperwork.

(c) **No conflict policy.** No special license plate can be issued which conflicts with the regular plate numbering system.

(d) **Non-offensive content policy.** No special license plate will be issued which may be offensive to the general public.

(e) **Fees.** Special license plate fees are set by statute and, with certain statutory exceptions, are collected in addition to annual registration fees required by the Oklahoma Vehicle License and Registration Act. If a special license plate or decal is mailed, a mailing fee for a metal plate or decal will also be collected.

(f) **Renewal.** Renewal decals may be obtained from a Motor License Agent or from the Oklahoma Tax Commission for all special license plates except Physically Disabled, Hearing Impaired, Amateur Radio, Indian Tribal, Vintage and Municipal Official plates. Special license plates are issued on a staggered expiration system, except for amateur radio plates and vintage decals.

(g) **Discontinuance of a special license plate.** ~~Title 47, Sections 1135.3 and 1135.5 provide for the discontinuance of any special license plate authorized by such Sections under the following conditions:~~

~~(1) If fewer than one hundred (100) of any special license plate authorized prior to January 1, 2004, are issued by January 1, 2006.~~

~~(2) For special license plates authorized on or after July 1, 2004, none shall be developed or issued by the Tax Commission until one hundred (100) prepaid applications have been received. The prepaid applications must be received by the Tax Commission within one hundred eighty (180) days of the effective date of the authorization, or the authorization shall be null and void. If the one hundred (100) prepaid applications are not received within the prescribed time period, all fees received will be refunded to the applicants.~~ As set forth by statute, certain types of special license plates have minimum issuance requirements and provisions for the discontinuance of plate types that do not meet those requirements.

(h) **Authorization of new special license plates.** The Oklahoma Tax Commission is authorized to design and issue new special license plate types to any person that applies to the Commission for the creation of a special license plate and meets the conditions and minimum standards outlined by statute.

PART 19. ENFORCEMENT [REVOKED]

710:60-3-210. Sale of vehicles seized for improper registration and/or license plates [REVOKED]

~~(a) As soon as practicable after seizing, or receiving notice of seizure of a Motor Vehicle for lack of or improper license plate or registration, from the Department of Public Safety, the County Sheriff, or other duly authorized peace officer of this State, the Administrator of the Motor Vehicle Enforcement Section of the Commission shall cause notice to be sent by certified mail, restricted delivery, return receipt requested, to the registered owner of such vehicle at the owner's last known address as shown by the records of this Commission.~~

~~(b) The notice shall advise the owner that the vehicle will be sold (The sale shall not be less than fifteen (15) days from the date of the notice.) at public sale on a date and at a time and place specified in the notice, unless the owner:~~

~~(1) Properly registers the vehicle and pays the Commission all license, registration and title fees due and owning, including any penalty and interest; or,~~

~~(2) Appears before the Administrative Law Judge of the Commission on a date and at a time and place specified in the above notice (which shall not be less than ten (10) days from the date of such notice) and shows why the fees and penalties should not be paid, nor the vehicle sold. [**See:** 47 O.S. §1115.1]~~

710:60-3-211. Order of sale from administrative hearing [REVOKED]

~~If the owner of a vehicle seized for an improper registration or license plate fails to properly register the vehicle and pay the fees and penalties before the time and date of the hearing before the Administrative Law Judge, or fails to appear and show cause why the vehicle should not be sold, the Administrative Law Judge shall order the sale to proceed at the time, date and place specified in the notice described in 710:60-3-210.~~

710:60-3-212. Notice of sale to lienholders [REVOKED]

~~Upon release of the order from the Administrative Law Judge to sell a vehicle seized for improper registration or license plate, the Administrator of the Motor Vehicle Enforcement Section shall cause notice of the sale of the vehicle to be posted, as provided by law, and mailed to all holders of liens or security interests in the vehicle, as they appear in the records of the Commission. The Enforcement Section will arrange for the sale of the vehicle as stated in the notice described in 710:60-3-210 and as provided by law.~~

710:60-3-213. Return of sale to be filed [REVOKED]

~~Upon the sale of a vehicle seized for improper registration or license plate, the Administrator of the Motor Vehicle Enforcement Section shall cause a return of sale to be filed with the Administrative Law Judge, stating the following information:~~

~~(1) The date, time and place of the sale;~~
~~(2) A description of the vehicle;~~
~~(3) The name of the registered owner;~~
~~(4) The name of the successful bidder; and,~~
~~(5) The amount paid.~~

SUBCHAPTER 5. MOTOR VEHICLE TITLES

PART 5. CERTIFICATES OF TITLE

710:60-5-53. Salvage titles

(a) **Salvage vehicle defined.** A salvage vehicle is a vehicle ten (10) model years and newer which has been damaged by collision or other occurrence to the extent that the cost of repairing the vehicle for safe operation on the highway exceeds sixty percent (60%) of its fair market value at the time of loss.

(b) **Determining classification as a salvage vehicle.** To determine the 10 year model age limit for this purpose, subtract 9 from the current latest manufacturers model on sale. September 1 is the generally accepted date that new model vehicles go on sale. For example, prior to September 1, 1991, the latest manufacturers model on sale are 1991 models. Therefore, a ten year old vehicle would be a 1982 (1991-9) model. 1981 and older models would be exempt from the salvage requirements. Beginning September 1, 1991, 1992 model vehicles officially go on sale, resulting in 1982 models becoming exempt from the salvage requirements. This formula for determining the age of a model year will apply to all such determinations regarding salvage and rebuilt vehicles.

(c) **Change of classification.** Vehicles over 10 model years old may go in to, or come out of, salvage at any time. No inspection is required to bring such vehicles out of salvage.

(d) **Out-of-state salvage titles.** Vehicles over 10 model years old entering Oklahoma with an out-of-state salvage title may receive either a salvage title or standard (green) title with a salvage date listed.

(e) **Notification by insurance companies.** An insurance company paying a loss on a vehicle 7 model years old or newer where the cost of repairing the vehicle to a roadworthy condition exceeds 60% of its fair market value is required to notify the vehicle owner to surrender the title to the Oklahoma Tax Commission or a motor license agent so that it may be replaced by a salvage title. The Motor Vehicle Division will also be notified by the insurance company. <u>The notice shall include the estimated total damage percentage determination of the actual cash value made by the insurance company to repair the vehicle for safe operation on the highway.</u>

(f) **Transfer salvage title to insurance company on payment of total loss due to theft; removal of salvage notation.** Any vehicle 7 model years old or newer on which an insurance company has paid a total loss due to theft must be transferred to the insurer by a salvage title.

However, the statutes provide that the salvage notation may be removed if the vehicle is recovered and has suffered damage amounting to less than 60% of the value of the vehicle. Certification to that effect, in the form of a letter on the insurance companies letterhead, will be required.

(g) **License plate not affected by salvage classification; current registration generally required.** The license plate from a vehicle entering salvage status need not be surrendered. However, registration must be current on a vehicle entering salvage status, unless it is being titled by a salvage dealer.

(h) **Damage by flooding brand.** A salvage or rebuilt vehicle which was damaged by flooding, or a vehicle which was submerged at a level to or above the dashboard of the vehicle and on which an amount of loss was paid by the insurer, shall have the notation "Damage by Flooding" listed on the face of the Oklahoma title.

(i) **Multi-state motor vehicle salvage processing centers.** Insurance companies licensed by the Oklahoma Insurance Department and which maintain a multi-state motor vehicle salvage processing center in this state may be issued an Oklahoma original salvage title on an unrecovered stolen vehicle without a visual inspection of the vehicle identification number (VIN) or odometer. For a vehicle to qualify, the following conditions must be met:

(1) The vehicle has been stolen and not yet recovered;

(2) An out-of-state title, assigned to the qualifying insurance company, must be submitted. An Oklahoma title may not be issued if an existing Oklahoma title record is on file reflecting a VIN inspection "hold"; and,

(3) One of the following documents, verifying the theft of the vehicle, must be submitted:

(A) Stolen vehicle report;
(B) Insurer's proof of loss; or,
(C) A statement from the insurer verifying that the vehicle was stolen and has not yet been recovered.

PART 7. TRANSFER OF TITLE

710:60-5-71. General provisions; assignments; liens; registration<u>; notice of transfer</u>

(a) **Transfer of title.** In most instances, an Oklahoma transfer title is issued upon receipt of a properly assigned and notarized Oklahoma title and proof of liability insurance.

Other instances where a transfer title may be issued are covered in the following subsections.

(b) **Use of assignment space provided on title document.** The first assignment space on the reverse side of an Oklahoma title is to be used by the owner on the face of the title to assign ownership. The subsequent reassignment spaces may be used by licensed Oklahoma used motor vehicle dealers only.

(c) **Liens transfer.** Any active liens indicated on the face of an assigned Oklahoma title will be carried forward to the transfer title being issued unless a lien release is presented.

(d) **Current registration required; exceptions.** Registration must be current on a vehicle before a transfer title may be issued, unless the vehicle is in a salvage or junked status. Licensed used motor vehicle dealers are exempt from this requirement when transferring to other licensed dealers, provided the vehicle was currently registered when it was assigned to the first dealer. Salvage dealers are exempt from registration requirements when obtaining salvage or junked titles.

(e) **Actual sales price documentation.** The actual sales price is required for any vehicle on which an Oklahoma title is to be issued and excise tax collected. The actual sales price is commonly referred to as the "purchase price". One of the following documents is required to establish the actual sales price:

(1) A purchase contract;

(2) A bill of sale;

(3) A "Declaration of Vehicle Purchase Price" (OTC Form 722-1); or

(4) Oklahoma title certificate, with a purchase price entry listing on the reverse side~~.~~;

(5) A purchase contract or bill of sale offered only to establish purchase price pursuant to this subsection, and not to convey ownership, need not be notarized.

(f) **Notice of Transfer of Ownership of a Vehicle.** The seller or buyer of a motor vehicle may file a Notice of Transfer of Ownership of a Vehicle to record the assignment of ownership in the Oklahoma Tax Commission Motor Vehicle Division computer system. The filing of Notices of Transfer is optional. The filing of the Notice of Transfer does not constitute a transfer of ownership and does not alleviate the buyer/new owner of the responsibility of properly and timely transferring title and paying all applicable taxes and fees. To be acceptable, notices must be submitted containing all required information. Incomplete forms will not be filed. There are two (2) acceptable types of notice:

(1) Seller or buyers may submit a **Notice of Transfer of Ownership of a Vehicle (OTC form 733)** and the appropriate statutory filing fee to the Oklahoma Tax Commission or a Motor License Agent.

(2) Effective January 2006, a removable tear-off tab, **Oklahoma Certificate of Title Tear-Off Notice of Transfer Tab,** was incorporated on Oklahoma vehicle title certificates. This tab, properly completed, is to be accepted and processed in the same manner as the Notice of Transfer of Ownership of a Vehicle Form (OTC form 733).

PART 9. AFFIDAVITS FOR USE IN TITLES

710:60-5-91. Affidavit of assembly and ownership

(a) **When Affidavit of Assembly and Ownership is required.** An Affidavit of Assembly and Ownership is required when major components from two or more vehicles are being incorporated into a single unit~~.~~ and for a kit car that comes with a Manufacturer's Statement of Origin and an invoice, or when major components are taken from two or more motorcycles to title as a single unit. It is also used when a combination of new components with original (notarized) Manufacturer's Statements of Origin and used components with bills of sale, invoices or receipts are used to make one motorcycle. For purposes of this Section, "**major component**" means a body or cab, frame, and front end or rear end clip, if the public VIN is changed.

(b) **Documentation required.** Documentation required to support application for Oklahoma title using an Affidavit of Assembly and Ownership includes:

(1) **A completed Affidavit of Assembly and Ownership (OTC Form 761 or 761MC).** The applicant must complete the Affidavit of Assembly and Ownership (OTC Form 761 or 761MC) and supporting documentation. Title or notarized bills of sale for all major components must be submitted, including:

(A) The vehicle identification number (VIN) of the vehicle from which the part was removed; and

(B) An original bill of sale or receipts for other components used to build the vehicle. Examples of other components may include: frame, engine, transmission, doors, hood, sheet metal, bed, tire and wheels, interior components.

(C) Supporting documentation for motorcycle/trike assembly are titles or notarized bills of sale for all major components and,

(D) Original bills of sale or receipts for all other components used to build the motorcycle/trike. Examples of other components may include: mirrors, headlights, tail lights, brakes, exhausts, seats, gas tanks, tires/wheels, fenders, handlebars, odometers/speedometers and, when assembling a trike, the transaxle/rear end and body.

(2) **A completed Application for Oklahoma Certificate of Title (OTC Form 701-6).** The applicant must complete the Application for Oklahoma Certificate of Title (OTC Form 701-6), as follows:

(A) The **year** to be listed on the certificate of title will be the year of the body or cab of the vehicle which is reconstructed.

(B) The **make** of the vehicle will be ~~(AV80BU);~~ noted as: "AV", ~~for Assembled Vehicle, "80BU" for the year and make of the vehicle that best describes the vehicle.~~ followed by a two (2) character year designation and two (2) character make designation.

(C) The **model** of the vehicle will be the three (3) or (4)-letter code ~~currently used~~ reflected on the Oklahoma Certificate of Title~~.~~ of the appropriate component vehicle. ~~Example: SKYL~~

(D) The **body type** of the vehicle will reflect the current body type of the vehicle. Example: 2DR

(E) The ~~**factory delivered price, (FDP),** and the **total delivered price, (TDP).**~~ Actual Purchase Price will be the ~~original price for the body or cab of the vehicle~~ combined purchase price for all components.

(F) Excise **taxes due** on the rebuilt vehicle will be determined as follows:

(i) Excise tax will not be collected if the title was in the registrant's name on each of the major components used to build the current vehicle.

(ii) Excise tax will be due upon transfer if the title was not in the registrant's name on each of the major components used to build the current vehicle.

(G) The **year** of an assembled motorcycle is the current year (completion date).

(H) The **make** of the Assembled Motorcycle will be "ASVE".

(I) The **model** will be "O".

(J) The **body** type will reflect "MC".

(c) **Approval required.** Any application for title using the Affidavit of Assembly and Ownership must be approved by the Motor Vehicle Division. ~~prior to the time the vehicle is inspected by the Department of Public Safety.~~

(d) **Inspection required.** ~~When application for title has been approved by the Motor Vehicle Division, the applicant must make an appointment for an inspection by the Department of Public Safety. The vehicle is then inspected by the Department of Public Safety/Vehicle Inspection Division, and an Oklahoma assigned Number is permanently affixed to the vehicle by the Department of Public Safety.~~ Following approval of the application for title by the Motor Vehicle Division, the assembled vehicle or motorcycle must be inspected by a motor license agent to confirm the vehicle identification number (VIN).

(e) **Oklahoma assigned number.** ~~The~~ An Oklahoma Assigned Number, when required and assigned by the Motor Vehicle Division, will be the valid vehicle identification number (VIN) for the ~~reconstructed~~ assembled vehicle~~.~~ or motorcycle.

(f) **Active liens.** If a lien is active on any vehicle identification number (VIN) used to build ~~the~~ a vehicle~~,~~ or motorcycle on which an Oklahoma Assigned Identification Number has been assigned and is now displayed, the paperwork must be returned to the Motor Vehicle Division, and the following procedure will apply:

(1) The Lien Department of the Motor Vehicle Division will issue a corrected Lien Entry Form, reflecting the new ~~vehicle identification number (VIN) assigned by the Department of Public Safety.~~ Oklahoma assigned number.

(2) The Lien Department of the Motor Vehicle Division will then notify any lienholder of the ~~corrected~~ new vehicle identification number (VIN).

(g) **No active liens.** If no liens are active on any vehicle identification number (VIN) used to build the vehicle~~,~~ or motorcycle, the approved Oklahoma Tax Commission Application for Title (OTC Form 701-6), ~~and~~ Assembly and Ownership Affidavit (OTC Form 761 or 761 MC), all original receipts and notarized bills of sale associated with ~~this~~ the transaction~~, Form 0988-6, can then be taken~~ may be submitted to an Oklahoma Motor License Agency for processing.

(h) **Issuance of title; tag and decal, if applicable.** At the time the Oklahoma Certificate of Title is issued, a current tag and decal will be issued also, if applicable. All plates and/or registration decals issued to any original vehicle or motorcycle used as a component for the rebuilt vehicle become invalid.

710:60-5-92. Obtaining title for front end section or glider kit

(a) **Documentation required.** Documentation required to support application to acquire title for a front end section / glider kit includes:

(1) **A Manufacturer's Statement of Origin.** The applicant must present a Manufacturer's Statement of Origin for the front end section or glider kit, showing the new serial number and a complete description of the vehicle, including the model year.

(2) **Itemized invoice.** The applicant must also present an itemized invoice listing the front end section or glider kit, all new parts, labor, and the ~~suggested retail selling~~ actual purchase price of all the new parts used, excluding federal excise tax. The invoice must show a completion date and set out a statement of facts describing the rebuilding of the vehicle, including, if applicable, reference to the old vehicle (and its serial number) from which "power train" components were obtained.

(3) **Application for Oklahoma Certificate of Title.** The applicant must submit a completed application for Oklahoma Certificate of Title (OTC Form 701-6).

(b) **Determination of ~~price~~ taxable value.** ~~One third (1/3) of the Factory Delivered Price (FDP) of the old vehicle will be added to the price of the glider kit, as described in subsection (a), including parts and labor. The resulting total will be deemed the factory delivered and total delivered price to appear on the new title issued for the vehicle rebuilt pursuant to this Section.~~ Excise tax will be assessed against the combined purchase price of the glider kit components and any purchased vehicle to which the components were affixed.

(c) **Issuance of new title; cancellation of prior title.** A new original title will be issued using the serial number of the glider kit as the Vehicle Identification Number (VIN). The model year shown on the new title will be the model year of the glider kit. The title and license plate of the old vehicle must be surrendered for cancellation at the time of registration of the rebuilt vehicle.

710:60-5-96. Ownership affidavit (OTC Form 753)

(a) **When Ownership Affidavit is used.** The Ownership Affidavit may be used ~~in conjunction with proof of purchase to convey ownership in lieu of an Oklahoma Certificate of Title when a buyer never received an Oklahoma Certificate of Title from the record owner reflected in the files of the Motor Vehicle Division.~~, upon Oklahoma Tax Commission approval, in

situations where a title applicant is lacking normally required titling documentation, such as an assigned certificate of title.

(b) **Documentation required.** Unless otherwise authorized by the Oklahoma Tax Commission, ~~An~~ an applicant using an Ownership Affidavit must present proof of purchase, not to exclude the Federal Odometer Disclosure Statement, if applicable. The proof of purchase must include the following:

(1) Complete description of the vehicle, to include the year, make, and the complete vehicle identification number;

(2) Seller's notarized signature;

(3) Buyer's name and address; and

(4) Date of sale (not the notary date).

(c) **Approval required.** ~~All~~ Except for those specific procedural instances where pre-approval is not required, utilization of ownership affidavits must be approved by the Motor Vehicle Division of the Oklahoma Tax Commission.

PART 11. LIENS

710:60-5-116. ~~Mechanics'~~ Possessory liens under Title 42 of the Oklahoma Statutes

(a) **Prior approval required.** Any person who wishes to claim a possessory lien and sell a vehicle for storage fees or work done for which they have not been compensated must comply with the lien filing provisions of Title 42 of the Oklahoma Statutes and submit proper documentation to the Tax Commission for approval.

(b) **Forms and instructions available.** A packet of ~~the forms~~ instructions and required ~~(OTC 752, OTC 752A and OTC 752B)~~ forms may be obtained from the Motor Vehicle Division of the Tax Commission or online at www.ok-tax.state.ok.us. There are two (2) types of possessory lien filings applicable to vehicles under Title 42 of the Oklahoma Statutes:

(1) One process applies to vehicles titled in the State of Oklahoma, or with a federally recognized Indian tribe, and for which the lien filers are not either licensed Class AA Wrecker Services or Salvage Pools, as defined in 47 O.S. § 591.2.

(2) One process applies to vehicles titled in another state, or to any vehicle on which the lien is filed by either a licensed Class AA Wrecker Service or a Salvage Pool, as defined in 47 O.S. § 591.2.

(c) **Procedure for completion and submission of forms.** ~~Do not send incomplete~~ Incomplete or altered forms will not be accepted. ~~OTC Form 752B is required to be submitted on safety paper. Photocopies of this form are not acceptable.~~ The forms will provide the applicant with a designated area in which to enter any desired identifying information.

(d) **Persons qualified to file ~~mechanics'~~ possessory liens.** Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof by furnishing material, labor or skill for the protection, improvement, safekeeping, towing, storage or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due such person from the owner for such service. ~~The required ownership and lienholder information are described by guidelines established in OAC 710:60-1-3. Generally, the person filing a mechanics' lien must have possession of the property at least thirty (30) days prior to the date of filing. Exceptions to the thirty day possession requirement are:~~

~~(1) Manufactured homes, where the possession requirement is fifteen (15) days; and,~~

~~(2) Junk vehicles in possession of a Class AAA wrecker service, where the possession requirement is five (5) days. [**See:** 710:60-5-55]~~

(e) **Manner of foreclosure.** Said lien may be foreclosed by a sale of such personal property ~~upon the notice and in the manner following. The notice shall contain:~~ , following proper notification to the record owner and all interested parties.

~~(1) The names of the owner and any other party or parties who may claim any interest in said property.~~

~~(2) A description of the property to be sold.~~

~~(3) The nature of the work, labor or service performed, material furnished, and the date thereof.~~

~~(4) The time and place of sale.~~

~~(5) The name of the party, agent or attorney foreclosing such lien.~~

(f) **Notice requirements.**

(1) **General requirements.** ~~Such notice shall be posted in three (3) public places in the county where the property is to be sold at least ten (10) days before the specified time of the sale. A copy of the notice shall be mailed to the owner and any other party or parties claiming any interest in the property, if known, at their last known post office address by registered mail on the day of posting. Any party or parties claiming an interest in the property shall include owners of chattel mortgages and conditional sales contracts as shown by the records at the Oklahoma Tax Commission. A receipt for certified mail must be included in the application for title.~~ The type and extent of the notices are outlined by statute and depend upon the status of the vehicle and the lien claimant. All require notification of the record owner and all interested parties. All require the completion and proper posting of a Notice of Sale (OTC 752A), although some specific information on the Notice is not required under all lien filing situations. Certain situations also require the filing of a Notice of Possessory Lien (OTC 752-D).

(2) ~~**Notice to owner and other interest holders prior to sale.** Since the purchaser of a vehicle possessed by a mechanic or garage man has priority over the secured party's lien, the mechanic or garage man may sell the vehicle upon notifying the owner and any other party who may claim any interest in the vehicle, of the amounts due for the repairs or storage of the vehicle and the date on which the vehicle will be sold.~~ **Ownership/Lienholder determination for notification purposes.** Record ownership and the existence of any lienholders on file with the Oklahoma Tax Commission/Motor Vehicle Division, or the equivalent office in another state, may be established as follows:

(A) If the property has an Oklahoma tag number, any Oklahoma tag agency may be contacted for ownership/lienholder information. Provided the information is available in the computer file, the filer will be asked to complete a Vehicle Information Request (OTC Form 769) and pay the applicable fee.

(B) If there is no current ownership record on file, a Vehicle Information Request (Form OTC 769), requesting a title search for the last record owner is to be completed and submitted to the Oklahoma Tax Commission/Motor Vehicle Division Title Research Section, along with the applicable fee.

(C) If the Research Section has no record on file, interested party notice may be accomplished by publication. Refer to **Notice when owner is unknown.**

(D) If the property is from another state, the Motor Vehicle Department of that state must be contacted for ownership/lienholder information. Letters or computer file printouts from other states' Motor Vehicle Departments providing that information are acceptable. Teletype printouts from law enforcement agencies are not acceptable.

(3) **Notice when owner is unknown.**

~~(A) **Notice by publication.**~~ If a vehicle owner is unknown, Section 2004 et. seq. of Title 12 of the Oklahoma Statutes makes provision for a notice by publication in an authorized newspaper.

~~(B) **Affidavit of notice by publication.** The notice has to be published for one day each week for a three week period in the county where the vehicle is located. After the publication is completed, an affidavit for the notice by publication will be acceptable as an enclosure under Section 92 of Title 42 of the Oklahoma Statutes.~~

(A) The newspaper must be authorized to publish legal notices pursuant to the provisions of 25 O.S. § 106 and must be published in the county in which the vehicle/boat/motor is located. If no newspaper authorized by law to publish legal notices is published in that county, the notice is to be published in some such newspaper of general circulation which is published in an adjoining county. Eligible newspapers may be verified by contacting the Oklahoma Tax Commission Motor Vehicle Division Title 42 Section.

(B) The newspaper notice must identify the vehicle by identification number, year, make and model and any other identifying numbers.

(C) The notice must include the public sale date, where the sale will be held, who may be contacted in reference to the sale, including their telephone number, and the amount of money owed on the filer's lien.

(D) The notice must run at least (1) day per week for (3) consecutive weeks. The first date available for public sale of the property is the day following publication of the final notice.

(E) Upon completion of the newspaper notification process, an Affidavit of Publication (OTC Form 752-D) must be completed and included with the Title 42 documentation submitted to the Oklahoma Tax Commission / Motor Vehicle Division.

(g) **Sale and distribution of proceeds of sale.** When the vehicle is sold, the special (possessory) lien holder, upon satisfying the amounts due to him/her must make arrangements for the payment in excess of the amounts due to him to be paid to the secured party or parties and to the owner of the vehicle.

(h) **Effect of foreclosure on purchaser's title.** The purchaser of the vehicle will receive a Certificate of Title without any liens indicated. [**See:** 42 O.S. §91 et seq.]

(i) **Abandoned vehicle auction.** Any vehicle offered at an abandoned vehicle auction performed by a Class AA wrecker service is exempt from all prior year registration fees, title fees, stop flag fees, and any other fees imposed by the state resulting from the prior ownership of the vehicle. However, if the purchaser is the registered owner of the vehicle prior to towing, any outstanding prior years' fees will be due.

SUBCHAPTER 7. MOTOR VEHICLE EXCISE TAX

710:60-7-3. Excise tax levy and exemptions

(a) **General levy on transfer of legal ownership.** Excise Tax is levied on every exchange of legal ownership on any vehicle registered or being registered in Oklahoma unless a specific tax exemption applies.

(b) **Exemptions.** Following is information on some of the more frequently encountered exempt situations:

(1) **Husband and wife; parent and child.** Only transfers made without consideration between husband and wife, parent and child, or vice versa, are exempt. A Family Affidavit (Form 794) must be included with the other supporting documentation and is to be attached to the Title documentation. This exemption does not apply to transfers between in laws or grandparents to grandchildren.

(2) **Out-of-state residence and registration; nonresident military.** Any vehicle brought into Oklahoma by a person formerly living in another state is exempt, if the person owned and registered the vehicle in such other state of his residence at least sixty (60) days prior to the time it is required to be registered in Oklahoma. Nonresident members of the Armed Forces stationed in Oklahoma may register their vehicle without excise tax if the vehicle has been registered by them in another state (60 day limit does not apply).

(3) **Governmental entities.** Any vehicle is exempt if registered by the State of Oklahoma or any political subdivision thereof. Additionally, vehicles leased by a county, municipality, or a school district are exempt from the excise tax.

(4) **Title by inheritance.** Any vehicle on which legal ownership was obtained by inheritance is exempt from the levy of the excise tax.

(5) **Certain transfers of corporations and partnerships.** Legal Ownership of vehicles obtained by transfer

as set out in Section 2105(9) of Title 68 **may** also be exempt.

(6) **Moped.** A motorized bicycle (moped) is exempt if sales tax was paid.

(7) **Rural water districts.** A Rural Water District is exempt.

(8) **Rural electric cooperatives.** A Rural Electric Coop is exempt.

(9) **Federal reserve banks.** Federal Reserve Banks are exempt.

(10) **Vehicles registered under International Registration Plan.** Transfer of vehicles registered under the International Registration Plan between lessor and lessee at the termination of the lease are exempt from the excise tax.

(11) **Short term rentals by rental companies.** Vehicles acquired by rental companies not to be rented for terms of more than 90 days may be registered and titled by the rental agency exempt from excise tax. An Oklahoma title branded "Rental Vehicle" will be issued. If the vehicle is sold less than one (1) year from date of issuance of the title, the rental agency must pay the excise tax that would have been due on the vehicle, plus a 20% penalty before transferring the vehicle, unless the vehicle is being transferred to the manufacturer or its financing company, to a franchised dealer of the same line/make of the vehicle to be transferred, or to anyone, if the vehicle is in a salvage condition (salvage or junk title).

(12) **Foreclosure of lien or mortgage; insurance contracts.** Any vehicle, the ownership of which was obtained by the lienholder or mortgagee under or by foreclosure of a lien or mortgage in the manner provided by law or to the insurer under subrogated rights arising by reason of loss under an insurance contract, is exempt from excise tax.

(13) **New vehicles registered by new car dealers.** A new vehicle registered by a new vehicle dealer is exempt for a period of four (4) months.

(14) **Insurance companies.** An insurance company may obtain title to a vehicle on which they paid a loss exempt from excise tax.

(15) **Revocable trusts.** Transfers made without consideration between an individual and an express trust which that individual or the spouse, child or parent of that individual has a right to revoke are exempt.

(16) **Limited liability companies.** A limited liability company is a combination of a corporate and a partnership business organization structure. Excise tax exemption applies to the following transfers:

(A) Transfers to the limited liability company if former owners are members of the limited liability company and the interest in the company is in proportion to interest in the vehicle prior to the transfer. A notarized bill of sale indicating such will be required as supporting documentation.

(B) Transfers of ownership from a limited liability company to members when a dissolution is made. A notarized affidavit indicating such is required.

(17) **Vehicle lease or lease-purchase agreements.** Transfers of ownership of a vehicle acquired by a lessee are exempt from excise tax, provided the vehicle excise tax was paid at the time of the initial lease or lease-purchase agreement and an Oklahoma title was issued.

(18) **Fire Protection Districts.** Vehicles acquired by a Fire Protection District are exempt from the levy of excise tax.

(19) **Exemption for disabled veterans in receipt of compensation at the one hundred percent rate.** Persons who have been honorably discharged from active service in any branch of the Armed Forces of the United States or Oklahoma National Guard, and who have been certified by the United States Department of Veterans Affairs, or its successor, to be in receipt of compensation at the one hundred percent (100%) rate for a permanent disability sustained through military action or accident or resulting from a disease contracted while in such service is exempt from vehicle excise tax for one (1) vehicle in a consecutive three (3) year period.

(A) To prove eligibility a disabled veteran must submit either an Oklahoma Tax Commission exemption card with the notation "Sales Tax Exemption:100% Disabled Veteran" or a letter from the United States Department of Veterans Affairs, its successor, or the Armed Forces of the United States, certifying that the veteran is receiving disability compensation at the 100% rate.

(B) In order to qualify for the exemption, the vehicle must have been purchased on or after July 1, 2005 and the name of the eligible disabled veteran must be included as an owner on the vehicle title.

SUBCHAPTER 8. RENTAL TAX ON MOTOR VEHICLE RENTALS

710:60-8-4. Collection, reporting, remittance of the tax; interest and penalties

(a) The tax is to be collected by the rental business at the time of the payment of the rental agreement.

(b) The following filing requirements apply to all taxpayers required to report and remit tax on motor vehicle rentals:

(1) Taxpayers must report the tax on forms prescribed and furnished by the Oklahoma Tax Commission.

(2) Returns are due on the ~~15th~~ 20th day of each month, for the liability incurred the previous calendar month. However, taxpayers who are permitted to file semiannual sales tax reports pursuant to 68 O.S. § 1365(B) may file semiannual Rental Tax Reports and remit taxes due thereunder to the Tax Commission on or before the ~~15th~~ 20th day of January and July of each year for the preceding six-month period.

(c) If payment of the tax is not postmarked or delivered to the Oklahoma Tax Commission on or before the ~~15th~~ 20th of the month, the tax shall be delinquent from that date. Reports timely mailed shall be considered timely filed. If a remittance is not timely made, interest at the rate of one and one-fourth

percent ($1\frac{1}{4}$%) per month shall be charged from the date the remittance should have been made until the tax is actually paid.
(d) If payment of the tax due is not made within thirty (30) days of the due date, a ten percent (10%) penalty will be applied.

SUBCHAPTER 9. MOTOR VEHICLE LICENSE AGENTS/AGENCIES

PART 9. SPECIFIC FISCAL DUTIES

710:60-9-95. Procedures for refunds to taxpayer

(a) **Refund procedures.** All possible vehicle/boat/outboard motor related refund situations are to be referred to the Motor Vehicle ~~Refund Section~~ Division of the Oklahoma Tax Commission. ~~In order to process~~ To initiate a refund under the noted circumstances ~~,all copies of the receipts issued to the taxpayer must be submitted.~~ the taxpayer must make a refund request, submitting the appropriate documentation and/or information. The following is normally required to initiate a refund, under the noted circumstances:

(1) **Overcharge on registration.** ~~Overcharge on registration requires both of the original registrations showing the overcharge.~~ A refund request with appropriate documentation confirming the registration fee remitted. The original registration receipts reflecting the overcharge may also be required.

(2) **Duplicate registration for the same vehicle.** ~~Duplicate registration for the same vehicle requires the taxpayer's original registrations, and tag/decal last issued, a photocopy of the first registration issued to the same vehicle and the original Excise/Title Receipt. (Not the title).~~ A refund request with appropriate documentation confirming both registration remittances, as well as the duplicate registration decal and/or license plate last issued.

(3) **Registration of a vehicle no longer owned.** ~~Registration of a vehicle no longer owned requires the taxpayer's original registration and the tag/decal purchased, a copy of the contract showing the trade in~~ A refund request with appropriate documentation confirming the registration remittance, as well as the registration decal and/or license plate issued and proper evidence of the disposition of the vehicle. Such evidence may be a copy of a sales or trade-in contract, a photocopy of the assigned certificate of title, or ~~an~~ a notarized affidavit signed by the refund applicant, stating that the vehicle has been sold and identifying the vehicle by serial number and listing the date sold and to whom. ~~See example below.~~

~~**I (NAME), do solemnly swear that I sold this (YEAR, MAKE, SERIAL NUMBER OF VEHICLE) to (TO WHOM SOLD) on or before (MONTH AND YEAR SOLD).**~~

~~_____ **(SIGNED BY CLAIMANT)**~~

~~_____ **(NOTARIZED)**~~

(4) **Excise tax paid in error or overcharge.** ~~Excise tax paid in error or overcharge requires the taxpayer's excise/title receipt and necessary documents supporting the reason why the excise tax was overcharged or not due.~~ A refund request with appropriate documentation confirming the excise tax remittance and documentation or information confirming the overcharge or excise tax exemption.

(5) **Wrong ~~type of tag issued~~ registration classification.** ~~Wrong type of tag issued requires taxpayers original registrations issued in error and the tag/decal. Also a photocopy of the correct registration issued. No refund can be given unless the error was made by the Oklahoma Tax Commission or motor license agent.~~ A refund request with appropriate documentation confirming the incorrect registration and re-registration at the correct classification. The improper license plate and/or registration decal must be returned, as well. The registering ~~M~~motor license agent ~~must send~~ may be required to submit a notarized statement of error for a refund to be allowed. (This is not to be confused with the process of ~~exchanging tags~~ changing registration classification during a registration period).

(b) **No refund for change in type of registration.** When the type of registration is being changed no refund is due (as in ~~auto~~ noncommercial registration to farm registration).

(c) **Refund for change of laden weight ~~classification for~~ of a commercial vehicle.** The only ~~time~~ circumstance under which the registration for a commercial vehicle's weight can be reduced is when the error is made by the motor license agent. In order to issue a refund in this instance, both original registrations and a notarized statement signed by the motor license agent showing that the error was made in their office must be submitted.

[OAR Docket #06-970; filed 5-17-06]

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

[OAR Docket #06-971]

RULEMAKING ACTION:
PERMANENT final adoption

RULES:
Subchapter 3. Reports and Returns; Payments and Penalties; Records
Part 1. General Provisions
710:65-3-4. [AMENDED]
710:65-3-8. [AMENDED]
Subchapter 7. Duties and Liabilities
710:65-7-15. [AMENDED]
710:65-7-17. [NEW]
710:65-7-18. [NEW]
Subchapter 9. Permits
710:65-9-8. [AMENDED]
Subchapter 13. Sales and Use Tax Exemptions
Part 1. Advertising in Media
710:65-13-1. [AMENDED]
Part 12. Aircraft [NEW]
710:65-13-63. [NEW]
Part 23. Gas and Electricity

710:65-13-123. [NEW]
Part 29. Manufacturing
710:65-13-154. [AMENDED]
710:65-13-156. [NEW]
Part 31. Medicine, Medical Appliances, and Health Care Entities and Activities
710:65-13-176. [NEW]
Part 35. Newspapers, Periodicals; Media
710:65-13-194. [AMENDED]
Part 42. Disabled Veterans in Receipt of Compensation at the 100% Rate [NEW]
710:65-13-275. [NEW]
Part 43. Social, Charitable, and Civic Organizations and Activities
710:65-13-339. [AMENDED]
710:65-13-343. [AMENDED]
710:65-13-344. [NEW]
710:65-13-345. [NEW]
710:65-13-346. [NEW]
710:65-13-347. [NEW]
710:65-13-348. [NEW]
Part 45. Modular Dwelling Units [NEW]
710:65-13-450. [NEW]
Subchapter 19. Specific Applications and Examples
Part 7. "D"
710:65-19-74. [AMENDED]
710:65-19-77. [AMENDED]
Part 15. "H"
710:65-19-142. [AMENDED]
Part 23. "L"
710:65-19-195. [NEW]
Part 39. "T"
710:65-19-328. [AMENDED]
710:65-19-330. [AMENDED]
Subchapter 21. Use Tax
710:65-21-7. [AMENDED]

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As part of the Commission's ongoing review of its rules, many proposed amendments to the existing Sales Tax rules have been made to implement recent legislation. All legislative references are to the 50th Legislature, 1st Regular Session (2005).

Sections 710:65-3-4 and 710:65-21-7 have been amended to clarify policy that vendors who file timely but incomplete sales and, or use tax reports will not be entitled to the remuneration provided for in 68 O.S. §§ 1367.1 and 1410.1.

Section 710:65-3-8, dealing with changes in the tax period for sales tax reporting purposes has been amended to notify taxpayers seeking to file sales taxes for a period other than the required calendar period of the specific information to be included in the request and with their monthly sales tax reports. **[68:1352(25)]**

Section 710:65-7-15, dealing with vendor liability has been amended to reflect the exempt status of sales to tax exempt, nonprofit organizations providing services during the day to homeless persons; certain youth athletic teams for fund raising purposes and for motion picture or television production companies for certain eligible productions. **[68:1361]**

New Section 710:65-7-17 has been added to Subchapter 7. Duties and Liabilities to reflect the exempt status of sales to qualifying 100% disabled veterans. **[68:1361]**

New Section 710:65-7-18 has been added to Subchapter 7. Duties and Liabilities to reflect the exemption status of sales to, by or on behalf of certain neighborhood watch organizations. **[68:1361]**

Section 710:65-9-8 dealing with special event permits and reporting has been amended to facilitate the application process. **[68:1364.2]**

Section 710:65-13-1, dealing with the sales tax exemption for certain advertising has been amended to reflect a new exemption for sales of advertising in sports and entertainment programs, and on billboards and for advertising via the internet, electronic display devices, public address or broadcast systems and satellite television enacted by Section 9 of HB 1547. **[68:1357(4)]**

New Part 12, dealing with aircraft repair, has been added to Subchapter 13. A New Section 710:65-13-63 has been adopted to reflect the provisions of HB 1577, which expands the scope of the exemption at Section 1357(26) of Title 68 by removing both the aircraft weight limitation and qualifying criteria for an aircraft repair facility. **[68:1357(26)]**

New Section 710:65-13-123 has been adopted to reflect the provision of HB 1498, which created an exemption for sales of electricity for use in enhanced recovery methods on a spacing unit or lease. **[68:1357]**

Section 710:65-13-154, dealing with credit limitations has been amended to reflect the legislative change in SB 435.

New Section 710:65-13-156 has been adopted to reflect the provisions of SB 435(1), which created an exemption for sales of personal property to a qualified distributor for use in a new or expanded distribution facility. **[68:1359(7)]**

Section 710:65-13-176 has been adopted to reflect the provisions of HB 1570, which provides an exemption for sales of personal property to a public trust having a local governmental entity or 501(c)(3) organization as a beneficiary for the purpose of constructing improvements to or expanding a hospital or nursing home owned by the public trust or nonprofit in counties with a population of less than 100,000 persons. **[68:1356]**

Section 710:65-13-194 has been amended to reflect the provisions of Section 18 of HB 1547, which provided that a television commercial constitutes an eligible production for exemption purposes and that the sales tax exemption for a motion picture or television production will no longer be administered as a refund claim, making the exemption applicable at the time of purchase. **[68:1357(21)]**

A New Part 42, dealing with 100% Disabled Veterans, has been added to Subchapter 13. A New Section 710:65-13-275 has been added to Part 42 to reflect the provisions of House Bill 1547 which adds a new statutory exemption for sales of personal property and services, not to exceed $25,000.00, to qualified 100% disabled veterans. **[68:1357]**

Section 710:65-13-339, dealing with the qualifications for "Collection and Distribution Organization" exemption, has been modified to reflect legislative changes enacted by HB 1562(1) **[68:1357(12)]**

Section 710:65-13-343 has been amended to reflect the provisions of Section 13 of SB 905, which expands the sales tax exemption for youth athletic teams to include sales "to" the teams. **[68:1356(44)]**

Finally, several New Sections have been added to Part 43 to reflect new statutory exemptions: Section 710:65-13-344, dealing with sales to a 501(c)(3) organization providing services to homeless persons during the day and located in a metro area with a population in excess of 500,000. [HB 1275] **[68:1356]**; Section 710:65-13-345, dealing with sales of personal property or services by a 501(c)(3) organization which are made during auctions for the principal purpose of providing funding for the preservation of wetlands and habitats for ducks or for the preservation and conservation of wild turkeys. [HB1625] **[68:1356]**; Section 710:65-13-346, dealing with sales of personal property or services to a 501(c)(3) organization that is a part of a network of community-based, autonomous member organizations that meet specific criteria. [SB801] **[68:1356]**; Section 710:65-13-347, dealing with sales of personal property or services to a 501(c)(3) organization which assists, trains, educates, and provides housing to physically and mentally handicapped persons provided that the organization receives at least 85% of their annual budget from state or federal funds [HB 1233] **[68:1356]**;

Section 710:65-13-348, dealing with the first $2,000 of each calendar year's sales to, by, or for the benefit of a qualified neighborhood watch organization [HB1547(8)] **[68:1356].**

A New Part 45, dealing with Modular Dwelling Units, has been added to Subchapter 13. A New Section 710:65-13-450 has been added to Part 45 to reflect the provisions of Section 8 of Senate Bill 1121 [2004] which adds an exemption for the sale of modular dwelling units equal to 45% of the total sales price of the units. **[68:1357]**

Section 710:65-19-74, dealing with the treatment of discounts for the calculation of sales price for sales tax computation purposes, has been amended to define "term discounts" consistent with the Streamlined Sales Tax Agreement.

Section 710:65-19-77, dealing with dues and fees has been amended to conform to the applicable statute. [**68:1354(11)**].

Section 710:65-19-142, dealing with the sales tax treatment of hospitals, has been amended to clarify and revise the referenced rule in accordance with current statutory language removing the obsolete references to legend drugs. **[68:1357]**

New Section 710:65-19-195 has been adopted to reflect the sales tax exemption for sales of lottery tickets when sold by a certified lottery retailer.

Section 710:65-19-328, dealing with transportation for hire has been amended for clarification purposes and to reflect a new exemption for sales of intrastate charter and tour bus transportation enacted by Section 14 of SB 905. [**68:1357**]

Section 710:65-19-330, dealing with telecommunication services has been modified to reflect legislative changes enacted by Section 12 of SB 905 excluding from the sales tax levy certain regulatory assessments and charges which are separately stated or readily identifiable from the service providers books and records. [**68:1354**]

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. REPORTS AND RETURNS; PAYMENTS AND PENALTIES; RECORDS

PART 1. GENERAL PROVISIONS

710:65-3-4. Contents of monthly sales report

(a) **General provisions.** Every vendor shall file a monthly report for sales made the preceding month stating the name of the seller, address, telephone number, federal employer identification number (FEIN) or social security number (SSN), sales tax number as it appears on the sales tax permit of the business and the period (month and year) covered by the report. In addition, the report shall disclose the following:

(1) Total gross receipts for the preceding month from sales, both taxable and non-taxable.

(2) The **"sales value"** of all withdrawals from inventory of goods initially purchased exempt from sales tax, including all items withdrawn for gifts, donations, prizes or business or personal use. Included is the cost of all withdrawals from inventory of goods initially purchased on a tax deferred basis pursuant to a direct pay permit which are subsequently withdrawn for a taxable use.

(3) Deductions allowed by law. Deductions not specifically delineated on the face of the return must be fully explained in the space provided.

(4) The amount of tax due, including any city or county tax, or both, as described in (d) of this Section.

(5) The balance of tax due less any remuneration earned, as described in (b) of this Section.

(A) The return should show the amount of interest (if any) that is due.

(B) The return should show the amount of penalty (if any) that is due.

(6) Such other reasonable information as the Commission may require. [**See:** 68 O.S. §§1365, 1367]

(b) **Remuneration.** When the sales tax report <u>with all required information included</u> is timely filed, the vendor may deduct the applicable remuneration as an allowance to reimburse the vendor for the expenses incurred in keeping records, preparing and filing reports, remitting tax to the Commission, etc. The remuneration may not be deducted and is not available to a vendor who <u>files an incomplete report,</u> files his report after the date of delinquency<u>,</u> or fails to make full payment on or before the due date.

(1) If the vendor is participating in the Commission's electronic funds transfer and electronic data interchange program, the applicable remuneration is two and one-fourth ($2\frac{1}{4}$) percent of the tax due.

(2) For all other vendors, the remuneration allowed shall be one and one-fourth ($1\frac{1}{4}$) percent of the tax due.

(c) **Exception to the requirement to file electronically.** The vendor may apply in writing to the Electronic Filing Coordinator, Oklahoma Tax Commission, P.O. Box 53374, Oklahoma City, OK, 73152-3374, for a determination that the vendor is unable to participate in the electronic funds transfer and electronic data interchange program, and if the application is approved, the vendor will be permitted to report on paper and to deduct the remuneration of two and one-fourth ($2\frac{1}{4}$) percent.

(1) To determine whether a vendor is "unable" to file electronically, the following guidelines shall be utilized:

(A) The taxpayer does not have access to a computer or internet access at home or place of business; and,

(B) The taxpayer does not use a tax preparer that has a computer or one that does not have internet access; and,

(C) The taxpayer is unable to use the Telefile system.

(2) Any exception to the electronic filing requirement will be granted for only twelve (12) months. At the end of the exception period the taxpayer's electronic filing capability may be reviewed.

(3) An aggrieved taxpayer may protest the determination of the Commission as provided by 68 O.S. § 207 pursuant to *OAC* 710:1-5-21 through 710:1-5-48, the rules of practice and procedure before the Commission.

(d) **Reporting for city and county taxes.**

(1) The state tax is determined by applying the state rate to the amount of net taxable sales (all sales less deductions allowed by law).

(2) The amount of city sales tax is determined by multiplying the amount of net taxable sales for each city by the rate for that city.

(3) The amount of county sales tax is determined by multiplying the amount of net taxable sales for each county by the rate for that county.

(e) **Excess tax collected.** If the vendor has collected, in the aggregate, an amount of sales tax from its customers, larger than the amount which would result from multiplying the taxable sales by the tax rate, whether due to the use of the bracket charts supplied by the Commission, the use of an electronic cash register that rounds up the tax, or any other reason, the vendor is responsible for remitting the total tax collected. The statement **"Excess Tax Collected"** should be written on the face of the report, under the line captioned **"Total Due."**

710:65-3-8. Change in tax period

(a) A vendor wanting to report on other than the calendar period prescribed by statute must first obtain approval from the Commission. To obtain approval, the vendor must, in writing, notify the Commission of the days on which taxpayer's fiscal period will begin and end for the succeeding twenty-four (24) months. Once approval is obtained, the taxpayer must continue to notify the Commission of the days on which taxpayer's fiscal period begins and ends. Failure to notify the Commission of taxpayer's fiscal period ending date in advance of the fiscal period will result in taxpayer's approval to use a fiscal period in lieu of a calendar period being revoked. [**See:** 68 O.S. §1352(~~P~~(25)]

(b) Once approved, the taxpayer is required to put the beginning and ending dates of the fiscal period on each report filed.

SUBCHAPTER 7. DUTIES AND LIABILITIES

710:65-7-15. Vendors' responsibility - sales to entities with other specific statutory exemptions

(a) **Sales to entities with other specific statutory exemptions.** In the case of sales to purchasers claiming exemption based upon specific statutory authority, the vendor must obtain the information described in this subsection:

(1) A **copy** of the letter or card from the Oklahoma Tax Commission recognizing the entity as one which is statutorily exempt from sales tax on its purchases; and

(2) A signed statement that the purchase is **authorized by, and being made by,** the exempt entity, with funds of the exempt entity, and **not** by the individual; and,

(3) In the case of sales to **fire departments organized for unincorporated areas**, as defined in 18 O.S. § 592, certification on the face of the invoice or sales ticket is also required.

(4) In the case of purchases made by the federal government, charged pursuant to the GSA SmartCard program, no letter or card from the Commission is required, and 710:65-13-130 should be consulted to determine the taxability of the transaction.

(b) **Examples and applications.** Types of entities which may receive letters or cards, certifying or confirming a specific statutory exemption include:

(1) **Churches**; [See: 710:65-13-40]

(2) **Youth camps**, **supported or sponsored by** one or more **churches**, members of which serve as trustees of the organization; [See: 710:65-13-33]

(3) **Children's homes** where church members are trustees or where the home is on church-owned land or where 50% of the juveniles are court-adjudicated and the home receives less than 10% of its funding from state funds; [See: 710:65-13-33]

(4) **Council organizations** of the Boy Scouts and Girl Scouts of America or the Campfire Boys and Girls; [See: 710:65-13-341]

(5) **Public schools**; [See: 710:65-13-210]

(6) Oklahoma System of **Higher Education**; [See: 710:65-13-210]

(7) **Private schools** registered with the State Department of Education and private institutions of higher education accredited by the Oklahoma State Board of Regents for Higher Education; [See: 710:65-13-210]

(8) **Federal governmental** units, institutions, and instrumentalities; [See: 710:65-13-130]

(9) **Governmental entities** of the State of Oklahoma, including county and local units; [See: 710:65-13-130]

(10) City and county **trust authorities**; [See: 710:65-13-550]

(11) Federally chartered **credit unions**;

(12) **Rural water districts**;

(13) Facilities engaged in the remediation or processing to ameliorate **hazardous wastes**; [See: 710-65-13-80]

(14) **Disabled American Veterans** Department of Oklahoma and its subordinate chapters; [See: 710:65-13-336]

(15) **Museums** which are members of the American Museum Association; [See: 710:65-13-334]

(16) **Rural Electric Cooperatives**;

(17) Federally qualified **health care** facilities;

(18) **Health care** facilities receiving reimbursement from the Indigent Care Revolving Fund;

(19) **Community based health centers** providing primary care services at no cost to the patient;

(20) **Cultural organizations** established to sponsor and promote educational, charitable, and **cultural events for disadvantaged children**; [See: 710:65-13-335]

(21) Federally recognized **Indian Tribes**;

(22) Leases or lease-purchases of tangible personal property or services to **municipalities, counties, or school districts**; [See: 710:65-13-210]

(23) Sales of tangible personal property or services **to**, or **by**, a tax-exempt [26 U.S.C. § 501(c)(3)] organization, which is organized primarily to provide education and to conduct events related to **teacher training in robotics**, and affiliated with a comprehensive University within the Oklahoma System of Higher Education;

(24) Sales of tangible personal property or services by an organization which is exempt from taxation pursuant

to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), in the course of conducting a **national championship sports event**, but only if all or a portion of the payment in exchange therefor would qualify as the receipt of a qualified sponsorship payment described in Internal Revenue Code, 26 U.S.C., Section 513(i);

(25) Volunteer fire departments organized pursuant to 18 O.S. § 592; [See: 710:65-13-340]

(26) Parent-teacher associations and parent-teacher organizations that are exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code; [See: 710:65-13-210]

(27) The non-profit organization which operates the Oklahoma City National Memorial and Museum; ~~and,~~ [See: 710:65-13-330]

(28) The first Fifteen Thousand Dollars ($15,000.00) of sales of tangible personal property sold for fund raising purposes to or by a youth athletic team which is part of an athletic organization exempt from federal taxation pursuant to 26 U.S.C. § 501(c)(4)~~.~~; [See: 710:65-13-343]

(29) Tax exempt, nonprofit organizations which provide services during the day to homeless persons; [See: 710:65-13-344]

(30) Motion picture or television production companies for certain eligible productions. [See: 710:65-13-194]

710:65-7-17. Vendors' responsibility - sales to disabled veterans receiving compensation at the 100% rate

In the case of a purchaser claiming exemption from sales tax pursuant to the exemption allowed by 68 O.S. §1357(32), the vendor must obtain either a copy of the exemption card issued the purchaser by the Tax Commission or the purchaser's name, address, and exemption number.

710:65-7-18. Vendor's responsibility - sales to, by, or for the benefit of, neighborhood watch organizations

In the case of sales made to purchasers claiming exemption because the purchases are made by, or for the benefit of a neighborhood watch association, the vendor must obtain the items of information described in this section:

(1) A copy of the neighborhood watch association's sales tax exemption card that was issued by the Oklahoma Tax Commission pursuant to Section 710:65-13-344.

(2) A signed, dated statement by the purchaser listing the purchaser's name, address and telephone number which states that the purchase is being made by or for the benefit of the neighborhood watch organization. The statement shall also contain the name, address and telephone number of the person responsible for keeping a record of the purchases made by or for the benefit of the organization.

SUBCHAPTER 9. PERMITS

710:65-9-8. Special event permits and reporting

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

(1) **"An event held on an irregular basis"**, for purposes of this Section, means any event that does not occur on a continuous and ongoing basis, even if there is some frequency or pattern of occurrences. Events held on "an irregular basis" may include, but are not limited to, events held once a week or only certain weeks, events that are held every weekend or only on particular weekends, events held once a month or for only certain months, and other events that are held on a periodic basis, as well as those which occur more sporadically.

(2) ***"Person"*** *means any individual, company, partnership, joint venture, joint agreement, association, mutual or otherwise, limited liability company, corporation, estate, trust, business trust, receiver or trustee appointed by any state or federal court or otherwise, syndicate, this state, any county, city, municipality, school district, any other political subdivision of the state, or any group or combination acting as a unit, in the plural or singular number.* [68 O.S. § 1352(12)]

(3) ***"Promoter"*** *or* ***"organizer"*** *means any person who organizes or promotes a special event which results in the rental, occupation or use of any structure, lot, tract of land, sample or display case, table or any other similar items for the exhibition and sale of tangible personal property or services taxable under Section 1350 et seq. of Title 68 of the Oklahoma Statutes by special event vendors.* [68 O.S.Supp.2003 § 1364.2]

(4) ***"Special event"*** *means an entertainment, amusement, recreation, or marketing event that occurs at a single location on an irregular basis and at which tangible personal property is sold.* ***"Special event"*** *shall include, but not be limited to gun shows, knife shows, craft shows, antique shows, flea markets, carnivals, bazaars, art shows, and other merchandise displays or exhibits.* ***"Special event"*** *shall not include any county, district or state fair or public or private school or university-sponsored event.* ***"Special event"*** *shall not include an event sponsored by a city or town that includes less than ten special event vendors.* [68 O.S.Supp.2003 § 1364.2]

(5) ***"Special event vendor"*** *means a person making sales of tangible personal property or services taxable under Section 1350 et seq. of Title 68 of the Oklahoma Statutes at a special event within this state and who is not permitted under Section 1364 of Title 68 of the Oklahoma Statutes.* [68 O.S.Supp.2003 § 1364.2]

(b) **Application for special event permit.** Every promoter or organizer of a special event shall file an application for a special event permit with the Taxpayer Assistance Division, Oklahoma Tax Commission~~, 2501 N. Lincoln Blvd., Oklahoma City OK 73194,~~ at least 20 days before the beginning of the special event. If more than one special event is to be held at the same location during a single calendar year, all may be included in one application, and a separate permit will be issued for each event. Each permit will include the dates of

the event to be held, and must be prominently displayed at the site of the event for its duration. If an applicant wishes to have permits issued for additional events after an application has been previously submitted, another supplemental application must be filed for the additional events. The application form for a special event permit may be obtained from the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 Lincoln Blvd., Oklahoma City, OK 73194, or online at www.oktax.state.ok.us.

(c) **Fee.** There is a fee of fifty dollars ($50.00) for each application filed, which must be remitted with the application.

(d) **Promoter or organizer to distribute vendors' reporting forms.** Special event promoters and organizations are required to provide sales tax report forms to special event vendors that will be selling tangible personal property and taxable services at the event.

(e) **Promoter or organizer to collect reports and tax from special event vendors.** At the end of the event, special event promoters are required to collect the sales tax reports, along with the sales tax due from each special event vendor.

(f) **Promoter or organizer to report and remit sales tax.** Promoters or organizers of special events must file sales tax reports and remit taxes collected from special events, as follows:

(1) Promoters and organizers are required to file the sales tax reports within fifteen days following the last day of a special event.

(2) Payment of the total tax due is required at the time the sales tax report is filed. If not filed on or before the fifteenth day, the tax shall be delinquent from such date. Reports timely mailed shall be considered timely filed. If a report is not timely filed, interest shall be charged from the date the report should have been filed until the report is actually filed; and,

(3) The organizer or promoter shall also submit a list of vendors at each event that hold a valid sales tax permit issued under 68 O.S. § 1364. The list shall include the vendor's name, address, telephone number, and sales tax permit number.

(4) Promoters and organizers are only liable for the failure to report and remit the sales taxes that have been collected by them from special event vendors.

(g) **Limitation of responsibilities of promoters or organizers.** Promoters or organizers of a special event that is held on an annual basis during the same thirty-day period each year may request that the Tax Commission limit their responsibilities to the following:

(1) Submitting of an application for a special event permit as provided in subsection A of this section;

(2) Providing report forms to special event vendors as provided in subsection C of this section; and,

(3) Within fifteen (15) days following the conclusion of the special event, submitting a list of special event vendors at each event, including the vendor's name, address, and telephone number.

(h) **Denial of limitation.** Requests submitted pursuant to (g) of this Section may be denied by the Tax Commission for reasons including, but not limited to, failure by the promoter to comply with the requirements of this section or failure by vendors of the promoter's previous special events to comply with the provisions of (i) of this Section.

(i) **Vendor reporting and remitting pursuant to subsection (g).** A special event vendor who has participated in a special event approved under subsection (g) shall remit the tax along with a sales tax report directly to the Tax Commission within fifteen (15) days following the conclusion of the special event. Sales taxes shall be considered delinquent and interest as provided by law will be charged if payment is not received or postmarked by the fifteenth (15th) day following the event.

(j) **Reporting and remitting tax when event lasts 30 days or longer.** When the special event will last thirty (30) days or longer, a sales tax report is required to be filed for each calendar month by the 15th day of the following month.

(k) **Remuneration.** Provided that the required sales tax reports are timely filed and the tax due remitted, promoters and organizers to whom special event permits have been issued may deduct the applicable remuneration allowed by 68 O.S. § 1367.1.

SUBCHAPTER 13. SALES AND USE TAX EXEMPTIONS

PART 1. ADVERTISING IN MEDIA

710:65-13-1. Exemption for ~~advertising through the internet, newspapers, periodicals, billboards, and electronic broadcast media~~ sales of certain types of advertising

(a) Gross proceeds from ~~the sale of advertising through the internet and the broadcast media, including radio, television and cable television, are exempt from tax. The sale of advertising space in newspapers, periodicals, and on billboards is also exempt. The purchase of materials and equipment to be used to produce an ad is a taxable purchase. In order for the advertising to be exempt, the publication must be generally recognized as a newspaper or be a periodical as defined by State law. [See: 68 O.S. §1357(4)]~~ *sales of advertising space in newspapers, periodicals, programs relating to sporting and entertainment events, and on billboards (including signage, posters, panels, marquees, or on other similar surfaces, whether indoors or outdoors), and any advertising via the Internet, electronic display devices, or through the electronic media, including radio, public address or broadcast systems, television (whether through closed circuit broadcasting systems or otherwise), and cable and satellite television, and the servicing of any advertising devices* are exempt from sales tax.

(b) The purchase of materials and equipment to be used to produce an advertisement is a taxable purchase.

(c) In order for the advertising in a newspaper or periodical to be exempt, the publication must be generally recognized as a newspaper or be a periodical as defined by state law. [See: 68 O.S. § 1357(4)]

PART 12. AIRCRAFT

710:65-13-63. Exemption for aircraft repair, modification and replacement parts

Beginning July 1, 2005, sales tax does not apply to sales of aircraft engine repairs, modification, and replacement parts, sales of aircraft frame repairs and modification, aircraft interior modification, and paint, or sales of services employed in the repair, modification and replacement of parts of aircraft engines, aircraft frame and interior repair and modification, and paint. [See: 68 O.S. § 1357(26)]

PART 23. GAS AND ELECTRICITY

710:65-13-123. Exemption for sales of electricity for use in enhanced recovery methods of oil production

(a) **General provisions.** Beginning July 1, 2006, sales of electricity to the operator of a spacing unit or lease where oil is produced or is attempted to be produced using enhanced recovery methods shall be exempt from the levy of sales tax. Enhanced recovery methods include but are not limited to *increased pressure in a producing formation through the use of water or saltwater if the electrical usage is associated with and necessary for the operation of equipment required to inject or circulate fluids in a producing formation for the purpose of forcing oil or petroleum into a wellbore for eventual recovery and production from the wellhead.*

(b) **Where to file for exemption.** To qualify for the exemption, the operator of the enhanced recovery methods on a spacing unit or lease must request in writing to the Director's Office, Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Boulevard, Oklahoma City, OK 73194, an exemption letter.

(c) **Supporting documentation required.** The request must set out the name of the operator, the physical location of the project, the Federal Identification Number of the operator, the date the project commenced, and the electric service account number associated with services provided to the project and the Production Unit Number and Merge Number of the project. A copy of the application [Form 1535] filed with and approved by the Oklahoma Corporation Commission must accompany the request.

(d) **Review and approval procedure.** Upon review and approval, a letter of exemption shall be issued to the operator, who must forward the exemption letter to the electric utility, to document the sales tax exemption on their purchases of electricity. The letter, when provided to the utility along with a statement by the operator that the purchases of electricity are exempt, shall constitute "properly completed documentation certified by the Oklahoma Tax Commission" as that phrase is used in 710:65-7-6.

(e) **Eligibility.** In order to be eligible for the exemption set forth in this section, the oil well production must not exceed ten barrels per day prior to the use of the enhanced recovery methods and the total content of oil recovered prior to the use of the enhanced recovery methods must not exceed one percent (1%) by volume.

(f) **Limitations.** The exemption shall apply only to the state sales tax rate and not to any county or municipal sales tax rate.

PART 29. MANUFACTURING

710:65-13-154. Limitation on credits

No qualified establishment, nor its contractors or subcontractors, receiving an incentive payment pursuant to the Oklahoma Quality Jobs Program Act, 68 O.S.§ 3601 et seq., shall be eligible to receive the credit described in 710:65-13-153 or 710:65-13-156. [**See:** 68 O.S. Supp. 1993, § 3607]

710:65-13-156. Exemption for "qualified distributor"

(a) **Qualification.** Sales of construction materials to a qualified distributor to be consumed or incorporated in a new distribution facility or to expand an existing distributing facility are exempt from sales and use tax. For purposes of this exemption, sales made to a contractor or sub-contractor who has previously entered into a contractual relationship with a qualified distributor for construction or expansion of a distribution facility shall be considered sales made to the qualified distributor.

(1) **"Distribution facility"** for purposes of this exemption, means buildings and land improvements used in the general wholesale distribution of groceries as defined or classified in the North American Industry Classification System (NAICS) under Industry No. 4244 and 4245, except that up to ten percent (10%) of the square feet of such building may be devoted to offices to provide clerical support for the distribution operation.

(2) **"Qualified distributor"** for purposes of this exemption, means an enterprise:

(A) Whose total cost of construction of a new or expanded facility exceeds the sum of Forty Million Dollars ($40,000,000) and the new or expanded facility adds at least fifty (50) new full-time-equivalent employees, as certified by the Employment Security Commission, and such employees are maintained for a period of at least thirty-six (36) months, upon completion of the facility.

(B) Which has at least seventy-five percent (75%) of its total sales to in-state customers or buyers.

(C) Which starts construction of its new or expanded facility on or after July 1, 2005 and before December 31, 2005.

(D) The exemption authorized pursuant to subsection (a) of this section shall only become effective when the governing body of the municipality in which the enterprises is located approves a resolution expressing the municipality's support for the construction for such new or expanded facility. Upon approval by the municipality, the municipality shall forward a copy of such resolution to the Oklahoma Tax Commission.

(3) **"Total costs of construction" defined.** For purposes of this Section, **"total cost of construction"** means

and includes building and construction materials, and engineering and architectural fees or charges directly associated with the construction of a new or expanded facility, but shall not include attorney fees. For purposes of (a)(2)(A) of this Section the **"total cost of construction"** shall also include the cost of qualified depreciable property, as defined by Section 2357.4 of Title 68 of the Oklahoma Statutes, and labor services performed in the construction of a new or expanded facility.

(4) **The employment requirement.** The employment requirement described in this Section can be satisfied by a portion of the required new full-time-equivalent employees being employed at a distribution facility related to or supported by the new or expanded distribution facility, so long as both or all facilities are owned by the same person.

(b) **Limitations.**

(1) The exemption pertains only to sales of tangible personal property consumed or incorporated in the construction of a new distribution facility or the expansion of an existing facility made after July 1, 2005. The exemption applies to sales made to a contractor or sub-contractor to be consumed or incorporated in the construction of a new or expanded distribution facility pursuant to a contract with a qualified distributor as well as to sales made to a qualified distributor.

(2) The exemption applies only to tangible personal property that becomes a part of the facility or that is directly consumed in the construction process.

(3) No exemption shall be granted if the qualified distributor fails to file both the documentation required in (e)(1) of this Section and the required certification issued by the Employment Security Commission with the Commission.

(c) **Administration.** Pursuant to statute, the exemption for sales to a qualified distributor outlined in this Section will be administered as a refund for state and local taxes paid by the qualified distributor to the vendor or, in the case of use tax, self-remitted to the state of Oklahoma.

(d) **Application process.**

(1) **Application.** All persons who believe that they fall within the exemption provided shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as attachments, specification of the new or expanded distribution facility a complete description of the facility to be expanded or newly built, and other information requested by the Commission.

(2) **Review.** Upon receipt of the Application, the Application will be reviewed by the Commission for completeness and compliance with the exemption. A copy of the application will be forwarded to the Employment Security Commission for establishment of the entities base line employment. The applicant will be notified of any action taken regarding the Application by the Commission.

(e) **Claims process.**

(1) **Records required for claim.**

(A) For each purchase made, the entity who believes that it will be certified as a qualified distributor shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

(i) Invoice indicating the amount of state and local taxes billed to the qualified distributor;

(ii) Affidavit of the vendor of the construction materials reflected on the invoice that state and local sales tax reflected on that invoice has not been audited, rebated, or refunded to the qualified distributor but rather the sales tax charge has been collected to the vendor and remitted to the Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached;

(iii) All additional documentation required to be submitted by the Commission.

(B) In cases where the state and local sales tax was paid by a contractor or sub-contractor who has previously entered into a contract with a qualified distributor, the qualified distributor shall file with the Commission the following:

(i) Invoices indicating the amount of state and local sales taxes billed;

(ii) An affidavit from the contractor or sub-contractor who made the purchase of construction materials reflected on the invoice stating that the sales tax reflected on the attached invoice and claimed by the qualified distributor is based on state and local sales tax paid by the contractor or sub-contractor on construction materials to be consumed or incorporated in a construction of new or expanded distribution facility and that the amount of state and local sales tax claimed was paid by the contractor or sub-contractor to the vendor and no credit, refund or rebate has been claimed by the contractor or sub-contractor. Any number of invoices can be attached to an affidavit of a contractor or sub-contractor provided that all invoices attached reflect purchases made by that contractor or sub-contractor and are reflected in the affidavit;

(iii) Additional documentation required by the Commission.

(2) **Filing claims.** At the option of the entity who believes it will be certified as a qualified distributor, the documentation can be filed monthly, quarterly, semi-annually, or annually. Certification issued by the Employment Security Commission must be filed within thirty-six (36) months of the date of first purchase.

(3) **Review.** The Commission will review the documentation submitted and determine within thirty (30) days whether the refund claimed will be allowed. In the event that the claim is denied, the person who submitted the documentation will be notified by the Commission as to the reason for denial. The person who submitted the documentation will similarly be notified that a claim has been approved.

(f) **Fiscal procedure.** Each month, the Commission shall transfer from sales tax collected the estimated amount of claims approved by the Commission the previous month.

(g) **Certification process.**

(1) **Application review.** Upon completion of the new or expanded distribution facility and the addition of the employees as required by statute, the person who believes he falls within the exemption shall apply for certification on forms provided by the Commission. Each application for certification shall be reviewed by the Commission for the purpose of determining that the thresholds required by law have been met. During such time that the Commission is reviewing the application for certification, the Commission will forward a copy of the application for certification to the Employment Security Commission who will review employees hired. Upon completion of the review by the Tax Commission and the Employment Securities Commission, the Tax Commission will notify the applicant of the approval or denial of the certification requested.

(2) **Approval.** The applicant whose certification has been approved shall receive a refund in the amount not to exceed the total amount of state and local sales taxes paid and previously approved by the Tax Commission. The applicant will also receive accrued interest upon the principal amount of the refund made. Provided, no claim for refund shall be filed by a qualified distributor before July 1, 2006. [**See:** 68 O.S. § 1359.1(C)]

(3) **Assessment.** If at any time within thirty-six (36) months of the date certification is issued by the Oklahoma Employment Security Commission the number of full-time-equivalent employees drops below fifty (50) such employees, any use or sales tax and interest previously refunded to the taxpayer will be assessed against the taxpayer receiving such refund and interest.

(4) **Denial of certification; protest procedure.**

(A) Any applicant whose request for certification is denied may, within thirty (60) days after the mailing of the denial by the Commission, file with the Commission a protest under oath, signed by the applicant or his duly authorized agent setting out:

(i) a statement of denial as determined by the Commission;

(ii) a statement of the applicant's disagreement with such denial; and

(iii) supporting documentation relied on by the taxpayer in support of certification.

(B) If an applicant fails to file a written protest within the sixty (60) days, then the denial, without further action of the Commission shall become final and no appeal will be entertained.

(C) Applicants filing a protest to the denial of certification by the Commission shall be scheduled for a hearing en banc before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least twenty (20) days prior to the hearing.

(D) The burden of proving that the denial of certification was erroneous is on the applicant. The applicant can present testimony, evidence and argument in support of the requested certification.

(E) The Commission will issue an order in each case. That order is directly appealable to the Supreme Court. [**See:** 68 O. S. § 225]

(F) For further information the applicant should refer to the Rules of Practice and Procedure Before the Oklahoma Tax Commission (710:1-5-21 through 710:1-5-48). [**See:** 68 O.S. §§ 1359.1, 1404.1]

PART 31. MEDICINE, MEDICAL APPLIANCES, AND HEALTH CARE ENTITIES AND ACTIVITIES

710:65-13-176. Exemption for certain hospitals and nursing homes

(a) **Qualification for exemption of sales to a "qualified purchaser".** Exempted from sales tax are *sales of tangible personal property to a public trust having either a single city, town or county or multiple cities, towns or counties or combination thereof as beneficiary or beneficiaries or a nonprofit organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3) for the purpose of constructing improvements to or expanding a hospital or nursing home owned and operated by any such public trust or nonprofit entity prior to the effective date of this act in counties with a population of less than one hundred thousand (100,000) persons, according to the most recent Federal Decennial Census.*

(1) As used in this section, *"constructing improvements to or expanding" shall not mean any expense for routine maintenance or general repairs and shall require a project cost of at least One Hundred Thousand Dollars ($100,000.00).*

(2) "Qualified purchaser" shall mean *a public trust having either a single city, town or county or multiple cities, towns or counties or combination thereof as beneficiary or beneficiaries or a nonprofit organization which is exempt from taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3).* In addition, *sales made to a contractor or subcontractor that enters into a contractual relationship with a public trust or nonprofit entity as described by this paragraph shall be considered sales made to the public trust or nonprofit entity.*

(b) **Administration.** Pursuant to statute, the exemption for sales to a "qualified purchaser" as outlined in this Section will be administered as a refund for sales or use taxes paid by the "qualified purchaser" to the vendor or, in the case of use tax not required to be charged by the vendor, self-remitted by the "qualified purchaser" or by a contractor or subcontractor to the "qualified purchaser."

(c) **Application process.**

(1) **Application.** All "qualified purchasers" shall file an Application/Intent to Qualify with the Commission.

The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as attachments, specification of the new or expanded hospital or nursing home facilities and other information requested by the Commission.

(2) **Review.** Upon receipt of the Application, the Application will be reviewed by the Commission for completeness and compliance with the exemption. The applicant will be notified of any action taken regarding the Application by the Commission.

(d) **Claims process.**

(1) **Records required for claim.**

(A) For each purchase made, the "qualified purchaser", shall file the following documentation with the Commission on forms provided for that purpose by the Commission:

(i) Invoice indicating the amount of sales taxes billed to the "qualified purchaser" and;

(ii) Affidavit of the vendor of the tangible personal property reflected on the invoice that sales tax reflected on that invoice has not been audited, rebated, or refunded to the "qualified purchaser" but rather the sales tax charge has been collected by the vendor and remitted to the Commission. Any number of invoices from the same vendor may be attached to one affidavit so long as the affidavit covers all invoices attached;

(iii) All additional documentation required to be submitted by the Commission.

(B) In cases where the sales tax was paid by a contractor or sub-contractor who has previously entered into a contract with a "qualified purchaser", the "qualified purchaser" shall file with the Commission the following:

(i) Invoices indicating the amount of sales taxes billed;

(ii) An affidavit from the contractor or sub-contractor who made the purchase of tangible personal property reflected on the invoice stating that the sales tax reflected on the attached invoice and claimed by the "qualified purchaser" is based on sales tax paid by the contractor or sub-contractor on tangible personal property purchased *for the purpose of constructing improvements to or expanding a hospital or nursing home owned and operated by a* "qualified purchaser" and that the amount of sales tax claimed was paid by the contractor or sub-contractor to the vendor and no credit, refund or rebate has been claimed by the contractor or sub-contractor. Any number of invoices can be attached to an affidavit of a contractor or sub-contractor provided that all invoices attached reflect purchases made by that contractor or sub-contractor and are reflected in the affidavit;

(iii) Additional documentation required by the Commission.

(2) **Filing claims.** The refund request and required documentation must be filed and in the possession of the Commission on or before the 30th day after the end of the fiscal year in which the purchases were made.

(3) **Review.** The Commission will review the documentation submitted and determine whether the refund claimed will be allowed. In the event that the claim is denied, the "qualified purchaser" who submitted the documentation will be notified by the Commission as to the reason for denial. The "qualified purchaser" who submitted the documentation will similarly be notified that a claim has been approved.

(e) **Fiscal procedure.** After the 30th day after the end of each fiscal year, *the Tax Commission shall determine whether or not the total amount of sales tax exemptions claimed by all purchasers is equal to or less than Six Hundred Fifty Thousand Dollars ($650,000.00). If such claims are less than or equal to that amount, the Tax Commission shall make refunds to the purchasers in the full amount of the documented and verified sales tax amounts. If such claims by all purchasers are in excess of Six Hundred Fifty Thousand Dollars ($650,000.00), the Tax Commission shall determine the amount of each purchaser's claim, the total amount of all claims by all purchasers, and the percentage each purchaser's claim amount bears to the total. The resulting percentage determined for each purchaser shall be multiplied by Six Hundred Fifty Thousand Dollars ($650,000.00) to determine the amount of refundable sales tax to be paid to each purchaser.*

PART 35. NEWSPAPERS, PERIODICALS; MEDIA

710:65-13-194. Exemption for sales of tangible personal property and services to a motion picture or television production company to be used or consumed in connection with an eligible production

(a) **General provisions.** Effective July 1, 1996, the sale of tangible personal property and services to a motion picture or television production company are exempt from sales and use taxes in Oklahoma, if used or consumed in connection with an eligible production. ~~The exemption will be administered as a refund to the production company of the sales or use tax paid vendors at the time of sale.~~

(b) **Definitions.** Pursuant to 68 O.S. Section 1357(21), **"Eligible production"** means "*a documentary, special, music video, or a television commercial or television program that will serve as a pilot for or be a segment of an ongoing dramatic or situation comedy series, filmed or taped for network or national or regional syndication; or a feature-length motion picture intended for theatrical release or for network or national or regional syndication or broadcast.* **"Qualified purchaser"** means a motion picture or television production company making purchases of tangible personal property and services for use in producing an eligible production, which has ~~properly registered its intent to qualify for a refund of sales taxes paid on those purchases~~ received an exemption letter for its eligible production.

(c) **Examples of exempt items.** ~~Exempt items~~ Items that may be purchased exempt from sales tax by a qualified purchaser include, but are not limited to:

(1) Accommodations and meals.

(2) Production equipment purchases and rentals.

(3) Set construction and rigging materials.

(4) Production office equipment and supplies.

(5) Prop and wardrobe purchases and rentals.

(6) Utilities used by the production company on location and in the production office.

~~(d) **Registration for qualification.** Applicant must register to qualify the production during the preproduction phase, by filing a "**Notice of Intent to Apply for a Sales Tax Refund**", which may be obtained from the Business Tax Review Section of the Central Processing Division of the Oklahoma Tax Commission. The registration is completed by submitting the properly executed "**Notice of Intent to Apply for a Sales Tax Refund**", along with the information prescribed by this subsection:~~

~~(1) Estimated production dates;~~

~~(2) Estimated local production expenditures;~~

~~(3) Name and address of the representative responsible for expenditure records; and~~

~~(4) Such additional information as the Commission may require.~~

~~(e) **Eligibility review and determination.** Upon receipt of the "**Notice of Intent**" to apply for the refund, the Commission will review the application and make a determination as to the applicant's eligibility.~~

~~(1) **Approval of application.** Upon a favorable determination, notice of the approved registration and instructions regarding the documentation required for obtaining the refund will be mailed to the production company.~~

~~(2) **Denial of application.** The Commission may refuse the application to qualify for the refund if the applicant is not a **"qualified purchaser"**, if the production is not an **"eligible production"**, or if the applicant in not in compliance with the provisions of this Section, or with applicable Oklahoma Statutes. The applicant will be given written notification of any such denial, along with the basis for the unfavorable determination.~~

~~(f) **Procedure to protest denial of application.** An applicant may, within thirty (30) days after the mailing of notification of action by the Commission, file a protest under oath, signed by the applicant or a duly authorized agent setting out:~~

~~(1) A statement of the action objected to;~~

~~(2) A statement of the applicant's disagreement with such action; and~~

~~(3) Supporting documentation and argument relied on by the applicant in support of its claim.~~

~~(g) **Result of failure to file protest.** If the applicant fails to file a written protest within the thirty (30) days, then the action of the Commission shall become final and no appeal will be entertained.~~

~~(h) **Hearing, burden of proof.** Applicants filing a protest to the denial of an eligibility application by the Commission shall be scheduled for a hearing en banc before the Commission for a date, time and place set by the Commission. Notice of the date, time and place will be given by mail at least ten (10) days prior to the hearing. The burden of proving that the denial of eligibility was erroneous is on the applicant. The applicant may present testimony, evidence and argument to support its application.~~

~~(i) **Refund procedure.** To obtain a refund under this Section the Qualified Purchaser must adhere to the filing and documentation requirements set out in 1357.8(E) of Title 68 of the Oklahoma Statutes.~~

~~(j) **Protest procedure when refund is denied in whole or in part.** A protest to the denial in whole or in part of a refund claim filed by a qualified purchaser shall be governed by the permanent rules of practice and procedure before the Commission, set out in 710:1-5-21 through 710:1-5-48.~~

(d) **Application process.** Application shall be addressed to the Taxpayer Assistance Division. Before the Oklahoma Tax Commission can issue an exemption letter certifying an exemption under this Section, the following information is required to substantiate the qualification for the exemption claimed:

(1) Legal name of the entity seeking exemption;

(2) Mailing address;

(3) Name of the production;

(4) Federal employer's identification number;

(5) A statement whether the production is a documentary, a music video, a television commercial, a television program or instead, is a full length motion picture;

(6) The projected dates of production activity in Oklahoma. The exemption letter will be valid during this period;

(7) The address at which records will be available for review;

(8) If the production is a television program, whether it is a pilot or if it will be a segment of a series;

(9) A statement whether the production being taped or filmed is for theatrical release, network broadcasting, national release or regional syndication; and

(10) Such additional information as the Commission may require to confirm eligibility.

(e) **Review and determination.** Upon receipt of the application, the Commission will review and make a determination as to the applicant's eligibility. Upon approval, a letter certifying that the exemption is allowed will be forwarded to the applicant.

(f) **Denial of certification; cancellation, suspension, revocation of certification.** Certification may be denied, cancelled, suspended, or revoked by the Commission for non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue an exemption letter pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through 710:1-5-48 of the permanent rules of the Commission.

(g) **Use of letter certifying eligibility for the exemption.** Persons claiming exemption under this Section should provide their vendors with a copy of the certification letter issued by the Commission and a signed statement that the purchase is being made exempt from sales tax. If purchases will be made

from a vendor on a regular basis, the vendor may make subsequent sales without requiring proof of eligibility for each sale, providing the person to who the exempt sales are being made has agreed in writing to notify the vendor of any and all purchases which may be made to which the exemption would not apply. Vendors may accept the certification set out in this subsection in the same manner as any other letter or card certifying to a specific statutory exemption as set out in 710:65-7-6 and 710:65-7-15.

(h) **Limitations.** Any letter certifying an exemption issued under this Section is valid only for use by the addressee and is not transferable. The exemption may **not** be used by any other entity, even if that entity claims to be an agent, administrator, party to a contract or other relationship. Each entity desiring to obtain a letter certifying an exemption must make application in its own name.

PART 42. DISABLED VETERANS IN RECEIPT OF COMPENSATION AT THE ONE HUNDRED PERCENT RATE

710:65-13-275. Exemption for disabled veterans in receipt of compensation at the one hundred percent rate

(a) **General provisions.** Sales of tangible personal property or services are exempt from sales tax when made to persons who have been honorably discharged from active service in any branch of the Armed Forces of the United States or Oklahoma National Guard, and who have been certified by the United States Department of Veterans Affairs, or its successor, to be in receipt of compensation at the one hundred percent (100%) rate for a permanent disability sustained through military action or accident or resulting from a disease contracted while in such service.

(b) **Supporting documentation required to receive an exemption card.** To receive an exemption card under this section, a veteran must provide a letter from the United States Department of Veterans Affairs certifying that the veteran is receiving disability compensation at the 100% rate.

(c) **Exemption limitation and qualifying sales.** The authorized exemption in this subsection is limited to Twenty-five Thousand Dollars ($25,000.00) of qualifying purchases per year per individual.

(d) **Qualifying sales.** Sales are exempt if the qualified veteran has an interest in the funds presented and the purchase is made on his or her behalf, and the person making the purchase on behalf of the qualified veteran has presented the qualifying documentation issued by the Oklahoma Tax Commission.

(e) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. Section 1352 are taxable to the contractor. A contractor who performs improvements to real property for a disabled veteran in receipt of compensation at the one hundred percent (100%) rate who qualifies for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to disabled veterans in receipt of compensation at the one hundred percent rate.

PART 43. SOCIAL, CHARITABLE, AND CIVIC ORGANIZATIONS AND ACTIVITIES

710:65-13-339. Qualifications for "Collection and Distribution Organization" exemption

(a) **Qualification for Collection and Distribution Organization exemption.** ~~Effective May 26, 1993, sales~~ Sales tax does not apply to the sale of tangible personal property or services to or by organizations ~~enumerated in 68 O.S.Supp.1993, § 1357(12),~~ exempt from taxation pursuant to 26 U.S.C. § 501(c)(3) and ~~which~~:

(1) are primarily involved in the collection and distribution of food and household products to other organizations ~~that are~~ that facilitate the distribution of such products to the needy and such distributee organizations are exempt from taxation pursuant to 26 U.S.C. § 501(c)(3) or

(2) facilitate the distribution of such products to the needy.

(b) **Application process.** Application shall be made on forms provided by the Commission. Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed:

(1) legal name of the entity seeking exemption;

(2) mailing address;

(3) location address;

(4) federal employer's identification number; and,

(5) name(s) and current mailing addresses of responsible officer(s).

(c) **Supporting documentation required.** To claim exemption under this Section, the following information must be submitted to the Commission along with the application:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(3);

(2) A written description stating the activities of the organization, as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or,

(D) Notarized letter from the President or Chairman of the organization; and,

(3) For organizations described in (a)(1) a ~~List~~ list of organizations, including federal employee identification numbers, to which items were distributed for the previous calendar year must also be provided.

(d) **Exemption limited to eligible, properly documented transactions.** Only sales of food, food products, and household products, purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the exemption described in this Section.

(e) **Other limitations.** The exemption set out in this Section does not apply to sales made in the course of business for profit or savings, competing with other persons engaged in the same or similar business.

(f) **Purchases by contractors.** Purchases of taxable personal property or services by a contractor, as defined by 68 O.S. § 1352 are taxable to the contractor. A contractor who performs improvements to real property for a "Collection and Distribution" organization, enumerated in 68 O.S.~~Supp.1993,~~ § 1357(12) may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to a "Collection and Distribution" organization.

710:65-13-343. Exemption for qualified youth athletic teams

Sales tax does not apply to the first $15,000.00 of each year's sales, to or by, ~~Youth~~ youth athletic teams ~~which are a part of an athletic organization exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(4) are exempt from having to charge sales tax on the first Fifteen Thousand Dollars ($15,000) of sales per year which are made for the purpose of raising funds for the benefit of the team.~~, made for the purpose of raising funds for the benefit of the team. In order to qualify for exemption the youth athletic team must be a part of an athletic organization exempt from federal income taxation pursuant to 26 U.S.C. § 501(c)(4).

710:65-13-344. Exemption for tax exempt, nonprofit organizations, which provide services during the day to homeless persons

(a) **Qualification for tax-exempt, nonprofit organizations which provide services during the day to homeless person exemption.** Sales of tangible personal property to a nonprofit organization exempt from income taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C. Section 501(c)(3), which is organized primarily for the purpose of providing services to homeless persons during the day and located in a metropolitan area with a population in excess of five hundred thousand (500,000) persons according to the latest Federal Decennial Census are exempt from sales tax.

(b) **Application process.** Application shall be made on forms provided by the Commission. Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed:

(1) legal name of the entity seeking exemption;
(2) mailing address;
(3) location address;
(4) federal employer's identification number; and
(5) name(s) and current mailing addresses of responsible officer(s).

(c) **Supporting documentation required.** To support the exemption claimed under this Section, the applicant must submit to the Commission, along with the application:

(1) A letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. Section 501(c)(3); and
(2) Documentation showing that the organization was established to provide services to homeless persons during the day and is located in a metropolitan area with a population in excess of five hundred thousand (500,000) persons according to the latest Federal Decennial Census. Also, a written description of the services of the organization, as may be evidenced by copies of:
(A) Articles of incorporation;
(B) By-laws;
(C) Brochure; or
(D) Notarized letter from the President or Chairman of the organization.

(d) **Exemption limited to eligible, properly-documented transactions.** Only those purchases actually purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization, will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchases of tangible personal property by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

710:65-13-345. Exemption for tax exempt organizations, which provide funding for the preservation of wetlands or habitats for wild ducks or preservation and conservation of wild turkeys

(a) **Qualifications for exemption.** Sales of tangible personal property or services are exempt from sales tax when made by an organization exempt from income taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C. Section 501(c)(3), during an auction for the principal purpose of providing funding for the preservation of wetlands and habitats for wild ducks or preservation and conservation of wild turkeys.

(b) **Exemption limited to eligible, properly-documented transactions.** Only those sales which are made during an auction for the principal purpose of providing funding for the preservation of wetlands and habitats for wild ducks and/or the preservation and conservation of wild turkeys will qualify for the exemption described in this Section.

710:65-13-346. Exemption for tax exempt organizations which are a part of a network of community-based, autonomous member organizations providing job training and employment services

(a) **Qualifications for exemption.** Sales of tangible personal property or services are exempt from sales tax when made to an organization, exempt from income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code, which is a part of a network of community-based, autonomous member organizations provided that the organization meets the following criteria;

(1) Serves people with workplace disadvantages and disabilities by providing job training and employment services, as well as job placement opportunities and post-employment support,

(2) Has locations in the United States and at least twenty other countries,

(3) Collects donated clothing and household goods to sell in retail stores and provides contract labor services to business and government, and

(4) Provides documentation to the Oklahoma Tax Commission that over seventy-five percent (75%) of its revenues are channeled into employment, job training and placement programs and other critical community services.

(b) **Application process.** Application must be made on forms provided by the Commission. Before the Oklahoma Tax Commission can issue a document verifying an exemption under this Section, the following information is required to substantiate the exemption claimed:

(1) legal name of the entity seeking exemption;

(2) mailing address;

(3) location address;

(4) federal employer's identification number; and

(5) name(s) and current mailing addresses of responsible officer(s).

(c) **Supporting documentation required.** To claim exemption under this Section, the following information must be submitted to the Commission along with the application:

(1) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. Section 501(c)(3);

(2) A written description stating the activities of the organization which shows that the applicant meets the criteria set out in sub-section (a) above as evidenced by copies of:

(A) Articles of incorporation;

(B) By-laws;

(C) Brochure; or

(D) Notarized letter from the President or Chairman of the organization.

(d) **Exemption limited to eligible, properly documented transactions.** Only sales of tangible personal property or services, purchased by the organization, invoiced to the organization, and paid for by funds or checks directly from the organization, will qualify for the exemption described in this Section.

(e) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

710:65-13-347. Exemption for specialized facilities, which provide services for physically and mentally handicapped persons

(a) **Qualification for specialized facilities, which provide services for physically and mentally handicapped persons.** Sales of tangible personal property and services are exempt from sales tax when made to an organization exempt from income taxation pursuant to the provisions of the Internal Revenue Code, 26 U.S.C., Section 501(c)(3), which assists, trains, educates, and provides housing for physically and mentally handicapped persons provided that the organization receives at least eighty-five percent (85%) of its annual budget from state or federal funds.

(b) **Application process.**

(1) **Application.** All "specialized facilities" shall file an Application/Intent to Qualify with the Commission. The Application/Intent to Qualify shall be on forms provided by the Commission and shall include, as attachments, the following information:

(A) Letter from the Internal Revenue Service (IRS) recognizing the organization as exempt from federal income taxation pursuant to 26 U.S.C. Section 501(c)(3);

(B) A written description stating the activities of the organization, as evidenced by copies of:

(i) Articles of incorporation;

(ii) By-laws;

(iii) Brochure; or

(iv) Notarized letter from the President or Chairman of the organization; AND

(C) Copy of the organization's annual budget representing that eighty-five percent (85%) of its budget is from state or federal funds.

(2) **Review.** Upon receipt of the Application, the Application will be reviewed by the Commission for completeness and compliance with the exemption. The applicant will be notified of any action taken regarding the Application by the Commission.

(c) **Exemption limited to eligible, properly documented transactions.** The exemption will be administered as a refund to the qualified organization. To receive the benefit of the exemption, the qualified organization must pay the applicable sales tax at the time of purchase to the vendor. Only sales of tangible personal property or services, purchased by the organization, invoiced to the organization, and paid for by funds or check directly from the organization will qualify for the refund described in this Section.

(d) **Refund procedure.** To obtain a refund under this Section, the qualified organization must file within one (1) year after the date of the sales transaction, a claim for a refund on forms provided by the Commission, along with invoices, and all receipts indicating the amount of state and local sales tax paid on sales exempt from tax under this section. Refund claims will be processed in the order of claims received by the Oklahoma Tax Commission. The sales tax qualifying for the exemption is limited to One Hundred Seventy-five Thousand Dollars ($175,000.00) each fiscal year and timely filed claims that exceed that total amount of refunds payable will be barred.

(e) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. Section 1352, are taxable to the contractor. A contractor who performs improvements to real property for qualified organizations may **not** purchase the tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by this Section.

710:65-13-348. Limited exemption for qualified neighborhood watch organizations

(a) **Qualification for exemption.** Effective July 1, 2005, the first $2,000 of each calendar year's sales of tangible personal property or services, to, by, or for the benefit of a qualified neighborhood watch organization that is endorsed or supported by or working directly with a law enforcement agency with jurisdiction in the area in which the neighborhood watch organization is located are exempt from sales tax. For purposes of this exemption "**qualified neighborhood watch organization**" *means an organization that is a not-for-profit corporation under the laws of the State of Oklahoma that was created to help prevent criminal activity in an area through community involvement and interaction with local law enforcement and which is one of the first two thousand organizations which makes application to the Oklahoma Tax Commission for the exemption after the effective date of the act.*

(b) **Application process.** Application must be in the form of a letter requesting an exemption card which should provide the legal name of the entity seeking exemption, a current mailing address, the entity's federal employer's identification number, and the supporting documentation described in subsection (c). The letter should be addressed to the Taxpayer Assistance Division, Oklahoma Tax Commission, 2501 N. Lincoln Blvd., Oklahoma City, OK 73194. Only the first two thousand applications received by the Oklahoma Tax Commission are eligible for exemption.

(c) **Supporting documentation required.** To claim exemption under this Section, the applicant must submit to the Commission, along with the application:

(1) Documentation showing that the organization is a not-for profit corporation under the laws of Oklahoma established to help prevent criminal activity in a specific area through community involvement and interaction with local law enforcement, as may be evidenced by copies of one or more of the following:

(A) Articles of incorporation;

(B) By-laws;

(C) Other documents that show the intent of the incorporators at the time of incorporation.

(2) Documentation showing that the organization is either endorsed, supported by or working directly with a law enforcement agency that has jurisdiction in the area where the neighborhood watch is located. Documentation may consist of membership lists, notices or minutes of meetings or letters from the applicable law enforcement agencies concerning their support, endorsement or involvement with the organization.

(3) A description of the boundaries of the area in which the neighborhood watch organization is located.

(4) The name and address of the person representing the organization to whom the exemption card will be mailed and who will be responsible for keeping track of the sales made to, by, or for the benefit of the organization so that the annual limit of $2,000 will not be exceeded by the organization.

(d) **Exemption limited to eligible, properly-documented transactions.** Only the first $2,000 of either sales to, by or on behalf of the organization are exempt. The organization must keep accurate records to enable it to properly document the exemption. The exemption documentation that vendors are required to obtain on purchases to, or for the benefit of the organization is set out in section 710:65-7-17.

(e) **Purchases by contractors.** Purchases of tangible personal property or services by a contractor, as defined by 68 O.S. § 1352, are taxable to the contractor. A contractor who performs improvements to real property for organizations which qualify for the exemption from sales tax on their purchases described in this Section may **not** purchase tangible personal property or services to perform the contract exempt from sales tax under the exemption provided by statute to the qualified organizations.

(f) **Review and determination.** Upon receipt of the application, the Commission will review and make a determination as to the applicant's eligibility. Upon approval, an exemption card will be sent to the applicant.

(g) **Denial of exemption; cancellation, suspension, revocation of exemption card.** The exemption may be denied, and the exemption card cancelled, suspended, or revoked by the Commission for non-compliance with the provisions of this Section, with applicable Oklahoma tax statutes, or for other good cause shown. Proceedings related to the cancellation or refusal to issue a certification pursuant to this Section shall be governed by 710:1-5-100 and 710:1-5-21 through 710:1-5-48 of the permanent rules of the Commission.

PART 45. MODULAR DWELLING UNITS

710:65-13-450. Partial exemption for modular dwelling units

Forty-five percent of the total sales price for the sale of a modular dwelling unit is exempt from sales tax when the modular dwelling unit is built at a production facility and moved in whole or in parts, to be assembled on site, and permanently affixed to the real property and used for residential or commercial

purposes. For purposes of this exemption a "modular dwelling unit" means a structure that is not subject to the motor vehicle excise tax imposed pursuant to Section 2103 of Title 68.

SUBCHAPTER 19. SPECIFIC APPLICATION AND EXAMPLES

PART 7. "D"

710:65-19-74. Discounts

Discounts, whether cash, term, or coupons which are not reimbursed by a third party that are allowed by a seller and taken by a purchaser on a sale are excluded from the calculation of sales price for basing sales tax computation. [**See:** 68 O.S.Supp 2003, § 1352(11)(b)(1)]. "Term Discount" for purposes of this Chapter means a predetermined discount offered by a seller to customers conditioned upon the invoice being paid within a specific period of time.

710:65-19-77. Dues and fees

(a) **General provisions.** Dues, fees, or any charge, payment, or contribution required as a condition precedent to membership in a club; or for access to the club establishment; or for access to or use of facilities, equipment, services, or privileges are subject to sales tax.

(b) **Definitions.** For purposes of this Section, **"dues"** and **"fees"** are used synonymously. **"Dues"** means, but is not limited to, payments made to support and maintain clubs, associations, or other membership organizations, or to acquire and retain membership therein. **"Dues"** includes free or complimentary dues or fees. ~~**"Dues"** may also include the value of any consideration given for the right to make purchases at a discounted price or for the right to any other benefit offered by the club or organization to the exclusion of any nonmember~~. In transactions where no monetary consideration is stated, **"dues"** means that value equivalent to the charge that would have otherwise been made.

(c) **Exemptions and exclusions.** Examples of transactions which are excluded from the application of this Section or are specifically exempt by statute are:

(1) Fees for instructional services at locations where no membership dues are charged, and there is no member/non-member difference in fees, are considered fees for the provision of nontaxable services.

(2) Dues paid to fraternal, religious, civic, charitable, or educational societies or organizations by regular members thereof, if:

(A) The organization operates under a lodge plan; and

(B) The organization does not operate for a profit which inures to the benefit of any individual member or members of the organization to the exclusion of other members.

(3) Dues paid monthly or annually to privately owned scientific and educational libraries by members sharing the use of services rendered by such libraries with students interested in the study of geology, petroleum engineering or related subjects.

(4) Dues or fees paid to YMCAs or YWCAs or municipally-owned recreation centers for the use of facilities and programs. As used in this Section, **"recreation centers"** shall not mean zoological or botanical parks or golf courses.

PART 15. "H"

710:65-19-142. Hospitals

(a) Hospitals, infirmaries, sanitariums, nursing homes, and like institutions are primarily engaged in the business of rendering services. They are not required to collect, report, and remit sales tax on gross receipts from meals, bandages, dressings, drugs, x-ray photographs or other tangible personal property when such items of tangible personal property are used in the rendering of a hospital service. This is true irrespective of whether or not such tangible items are billed separately to their patients.

(b) With the exception of ~~legend~~ drugs, excluding over-the-counter drugs, as outlined in 710:65-13-170, hospitals, infirmaries, and sanitariums are deemed to be the purchasers for use or consumption of all tangible personal property used in the rendering of their service, and the sellers of these items to hospitals, infirmaries or sanitariums are required to collect tax on sales of such property to hospitals, unless the hospital is owned or operated by the federal government, the State of Oklahoma, a city, county, public trust, or a federally-recognized Indian Tribe, in which case the exemption described at *OAC* 710:65-13-130 will apply. ~~Legend drugs may be sold to h~~Hospitals, infirmaries or sanitariums, engaged in the administration of drugs to their patients, may purchase drugs, except for over-the-counter drugs, exempt from sales tax if the purchaser holds a valid sales tax permit.

(c) When hospitals furnish meals to nurses, attendants and patients as a part of the service rendered, the hospitals are deemed to be the users or consumers of the food and beverages used in the preparation of these meals and the sellers of these items to the hospital are required to collect tax on the sales of such property.

(d) When privately owned hospitals operate cafeterias that serve meals to the public, they will be allowed to purchase all foodstuffs used to operate the cafeteria exempt from tax for resale with a valid sales tax permit. The hospitals will then be required to collect the sales tax on sales to their customers and report and remit same to the Commission each month. The hospitals will also be required to pay sales tax on the cost of all foodstuffs withdrawn from stock, which are used to feed patients.

(e) State, city or county hospitals who operate cafeterias that serve meals to the public, or who charge their employees, are also required to collect the sales tax on sales to their customers and report and remit same to the Commission each month.

PART 23. "L"

710:65-19-195. Sales of lottery tickets

Sales of lottery tickets are exempt from sales tax when the tickets are sold by a lottery retailer providing the retailer has been duly certified by the Oklahoma Lottery Commission in accordance with 3A O.S. Section 717.

PART 39. "T"

710:65-19-328. Transportation for hire

(a) Sales tax is due on the gross receipts or gross proceeds of transportation for hire to persons by common carrier, including motor transportation companies, pullman car companies, limousines, shuttle services, and other means of transportation for hire. Sales tax is not due on the gross receipts of the sale of transportation by taxicabs.

(b) Transportation for hire is exempt from sales tax:

(1) if the transportation services are provided by a tourism service broker, or

(2) if the transportation services are provided by funeral establishments for purposes of conducting a funeral-, or

(3) if the transportation services are sales of intrastate charter and tour bus transportation. As used in this paragraph, "intrastate charter and tour bus transportation" means the transportation of persons from one location in this state to another location in this state in a motor vehicle which has been constructed in such a manner that it may lawfully carry more than eighteen persons, and which is ordinarily used or rented to carry persons for compensation. Provided, this exemption shall not apply to regularly scheduled bus transportation for the general public. [See: 68 O.S. Section 1357(32)]

(c) Charges for local transportation are exempt where the fare does not exceed One Dollar ($1.00) or where the transportation is entirely within the corporate limits of a single municipality.

(d) Examples:

(1) A limousine picks up a passenger at a hotel in city A and transports the passenger to the airport which is also located in City A. The charge for the transportation is not subject to sales tax.

(2) A shuttle picks up a passenger in city B and transports the passenger to the airport in city A. Since transportation was completed inside the limits of city A, the transportation was not provided within the corporate limits of city B and the charge for the transportation is therefore subject to sales tax.

(e) Transportation by horse-drawn carriages or similar conveyances are sales of transportation and are subject to this rule.

710:65-19-330. Telecommunications services

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

(1) ***"Air-to-ground radiotelephone service"*** *means a radio service, as that term is defined in 47 CFR 22.99, in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.* [68 O.S.Supp.2003, § 1354.30(A)(1)]

(2) ***"Call-by-call basis"*** *means any method of charging for telecommunications services where the price is measured by individual calls.* [68 O.S.Supp.2003, § 1354.30(A)(2)]

(3) ***"Communications channel"*** *means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.* [68 O.S.Supp.2003, § 1354.30(A)(3)]

(4) ***"Customer"*** *means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service.* ***"Customer"*** *does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.* [68 O.S.Supp.2003, § 1354.30(A)(4)]

(5) ***"Customer channel termination point"*** *means the location where the customer either inputs or receives the communications.* [68 O.S.Supp.2003, § 1354.30(A)(5)]

(6) ***"End user"*** *means the person who utilizes the telecommunications service. In the case of an entity,* ***"end user"*** *means the individual who utilizes the service on behalf of the entity.* [68 O.S.Supp.2003, § 1354.30(A)(6)]

(7) ***"Home service provider"*** *means the same as that term is defined in Section 124(5) of Public Law 106-252, the Mobile Telecommunications Sourcing Act.* [68 O.S.Supp.2003, § 1354.30(A)(7)]

(8) **"International telecommunications services" defined. "International telecommunications services"** means all telecommunications services that either (1) originate in this state and terminate outside of the United States or (2) originate outside of the United States and terminate in this state, where, in either instance, a service address of the telecommunications service is in this state.

(9) **"Interstate telecommunications services" defined. "Interstate telecommunications services"** means all telecommunications services that either (1) originate in this state and terminate in another state or (2) originate in another state and terminate in this state, where, in either instance, a service address of the telecommunications is in this state. Interstate includes international.

(10) **"Intrastate telecommunications services" defined. "Intrastate telecommunications services"** means all telecommunications services regardless of routing that both originate and terminate within this State.

(11) **"Local exchange telecommunications services" defined. "Local exchange telecommunications services"** means the provision of each access line and each dial tone to a fixed location for sending and receiving service in the provider's local exchange network. Local exchange service includes, but is not limited to, all ordinary exchange and toll service, extra listings, joint-user service, customer access line charges, and auxiliary services (call waiting, call forwarding, etc.).

(12) ***"Mobile telecommunications service"*** *means the same as that term is defined in Section 124(5) of Public Law 106-252, the Mobile Telecommunications Sourcing Act*. [68 O.S.Supp.2003, § 1354.30(A)(12)]

(13) ***"Place of primary use"*** *means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services,* ***"place of primary use"*** *must be within the licensed service area of the home service provider*. [68 O.S.Supp.2003, § 1354.30(A)(13)]

(14) ***"Post-paid calling service"*** *means the telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to which a telephone number which is not associated with the origination or termination of the telecommunications service. A post-paid calling service includes a telecommunications service that would be a prepaid calling service except it is not exclusively a telecommunications service*. [68 O.S.Supp.2003, § 1354.30(A)(14)]

(15) ***"Prepaid calling service"*** *means the right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount*. [68 O.S.Supp.2003, § 1354.30(A)(15)]

(16) ***"Private communication service"*** *means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels*. [68 O.S.Supp.2003, § 1354.30(A)(16)]

(17) ***"Service address"*** *means:*

(A) *The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid;*

(B) *If the location in subparagraph (A) of this paragraph is not known,* ***"service address"*** *means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller; and,*

(C) *If the locations in subparagraphs (A) and (B) of this paragraph are not known,* ***"service address"*** *means the location of the customer's place of primary use.* [68 O.S.Supp.2003, § 1354.30(A)(17)]

(18) **"Wide area transmission service" ("WATS/800") defined. "Wide area transmission service (WATS/800)"** means any high volume telephone or telegraph service purchased under separate contract which permits the subscriber to make or receive unlimited incoming and/or outgoing communications to specified geographical service areas.

(b) **Sales tax levied on the sale of telecommunications services.** Sales tax is levied on the sale of telecommunications services regardless of the vendor of said service as follows:

(1) Telecommunications services which originate or terminate in Oklahoma and are charged to the consumer's service address in Oklahoma, regardless of where physical bills for such telecommunications services are sent.

(2) Local exchange telecommunications services and rental charges.

(3) The sale of a prepaid telephone authorization number and the recharge of a prepaid telephone calling card or authorization number as determined by *OAC* 710:65-19-331.

(c) **Transactions to which the tax is applicable.** Telecommunications services include:

(1) The transmission, conveyance, routing, or reception of any electronic, electromagnetic interactive transmission, or any other kind of energy force variations of information in any form, including but not limited to voice, image, data, or printed copy signal by means of wires, cables, radio waves, laser microwaves, satellites, fiber optics, any combination of these media, or any other method now in existence or that may be devised.

(2) The intrastate or interstate transmission of messages, programming or information through use of local, toll and wide area telephone service; private communications services; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications services; specialized mobile radio; stationary two-way radio; two-way paging service; facsimile or FAX; or any other form of mobile and portable two-way communications; or any other transmission of messages, programming or information by electronic or similar means between or among points by wire, cable, fiber-optic, laser, microwave, radio, satellite, or any combination of these media, or any method now in existence or that may be devised.

(3) Rental charges, including construction charges and charges for installation and other items associated with the connection, change of service or servicing of any equipment having any connection with the transmission of any message or image.

(d) **Transactions to which the tax is not applicable.** Telecommunications services do not include:

(1) Interstate telecommunications services used, allocated or distributed between a parent corporation and its wholly owned subsidiaries, between the wholly owned subsidiaries, or between members of an affiliated group as defined by 12 U.S.C. §1504, when the tax imposed under this chapter previously was paid to a retailer, but only to

the extent that the charges between the parent corporation and wholly owned subsidiaries, between the wholly owned subsidiaries, or between members of an affiliated group, represent an expense allocation between the corporations and not the generation of profit for the corporation rendering such service.

(2) Value-added non-voice services in which computer applications are used, other than for purposes of transmission, to act on the form, content, code or protocol of the information. If charges are not separately stated, however, charges are subject to tax.

(3) Charges made to a person regularly engaged in the business of selling telecommunications services for:

(A) Carrier access;

(B) Right of access;

(C) Telecommunications services to be resold; or

(D) Telecommunications services used in the subsequent provision of, used as a component part of, or integrated into end-to-end telecommunications services.

(4) Charges for having an employee personally answering a telephone and verbally relaying a message are not subject to sales tax.

(5) Charges for "wide area transmission service" (WATS/800) and for "private communications service" which are "interstate telecommunications services", all as defined in this Section, are exempt from sales tax.

(6) Regulatory assessments and charges, including charges to fund the Oklahoma Universal Service Fund, the Oklahoma Lifeline Fund and the Oklahoma High Cost Fund.

(7) If charges for taxable telecommunications services are aggregated with and not separately stated from charges for nontaxable services or products, the nontaxable charges will be subject to taxation unless the provider can reasonably identify charges not subject to the tax, charge or fee from the provider's books and records kept in the regular course of business;

(e) **Coin-operated telephone taxable.** Gross receipts from a coin-operated telephone are subject to sales tax.

(f) **Purchases of tangible personal property by persons providing telecommunications services.** Except as otherwise set out in this paragraph, persons engaged in the business of providing telecommunications services are the consumers of tangible personal property used in providing those services. Sales of such tangible personal property to persons providing telecommunications services are taxable. However, effective May 6, 1992, sales of wireless telecommunications equipment to a wireless telecommunications vendor, who subsequently transfers the equipment to a customer for no charge or for a discounted charge, in connection with the customer's purchase of new or continued wireless telecommunications service, is exempt.

(g) **Access charges billed to customer.** Access charges billed to consumers of telecommunications services are taxable.

(h) Sales of telecommunications services shall be sourced as set out in Section 710:65-18-5.

SUBCHAPTER 21. USE TAX

710:65-21-7. Reports, payments, and penalties

(a) **General provisions.** Payment of use tax is due on the first of each month for purchases made the preceding month. Every person, whether responsible to report and remit the tax as a vendor, or as a purchaser, must file for each month for which a liability exists. If not reported and not paid on the 20th day of the month following the month in which the goods were sold for use in Oklahoma, or in which the goods were purchased for use in Oklahoma, the tax and report shall be delinquent and interest and penalty will be assessed as allowed by statute. Reports are to be made on forms which can be obtained from the Commission.

(b) **Semimonthly electronic reporting.** *Persons owing an average of Two Thousand Five Hundred Dollars ($2,500.00) or more, per month, in total use taxes for the previous fiscal year shall remit the tax due and shall participate in the Tax Commission's electronic funds transfer and electronic data interchange program, according to the following schedule:*

(1) *For sales from the first (1st) day through the fifteenth (15th) day of each month, the tax shall be due and payable on the twentieth (20th) day of the month, and remitted to the Tax Commission by electronic funds transfer. A taxpayer will be considered to have complied with the reporting requirements of this paragraph if, on or before the twentieth (20th) day of each month, the taxpayer paid at least ninety (90) percent of the liability for that fifteen-day period, or at least fifty (50) percent of the liability incurred during the immediate preceding calendar year for the same month; and*

(2) *For sales from the sixteenth (16th) day through the end of each month, the tax shall be due and payable on the twentieth (20th) day of the following month, and remitted to the Tax Commission by electronic funds transfer.*

(c) **Electronic reporting; due dates; delinquency dates.** *Persons required to remit the tax due pursuant to subsection (b) shall file a monthly use tax report in accordance with the Tax Commission's electronic data interchange program on the twentieth (20th) day of the month following that in which the tax is levied. Taxes not paid on or before the due dates specified in subsection (b) shall be delinquent from such dates.* [68 O.S.Supp.2003, § 1405(D)]

(d) **Payment.** Remittances covering the use tax liability reported shall accompany the use tax return. Use taxes will be considered delinquent and interest as provided by law will be charged if payment is not received or postmarked by the date the return is due.

(e) **Interest.** Interest at the rate provided by law will be imposed on all liability not paid at the time when required to be paid. Said interest will be imposed and collected on the delinquent tax at the statutory rate from the date the tax is delinquent until paid.

(f) **Audit; refund/credit for overpayment; assessment inclusive of interest due.** When, in the course of an audit, it is found that the tax being audited was overpaid for any period included in the audit, and the taxpayer has not filed a verified claim for refund of the overpayment, the overpayment may be

allowed as a credit against the total liability established during the audit. The overpayment shall be applied to the liability as of the date of the overpayment. Whenever an assessment is made for any delinquent tax, the amount of interest due thereon at the time the assessment is made shall be included in the assessment.

(g) **Liability for tax, penalty, interest; interest computation.** Any taxpayer responsible for the payment of any tax levied by any state tax law shall be liable for payment of interest at the rate set by statute on any amount of tax not paid before it becomes delinquent. Interest shall be computed for each day of delinquency from the date the tax becomes delinquent until it is paid.

(h) **Penalty for failure to file and remit.** A vendor who fails to file a return and remit the full amount of the tax within fifteen (15) days after the tax is due shall be subject to a penalty of ten (10) percent of the amount of tax due.

(i) **Penalty for failure or refusal to file after demand.** In the case of failure or refusal to file within ten (10) days after written demand has been served upon the taxpayer by the Commission, a penalty of twenty-five (25) percent may be assessed and collected.

(j) **Penalty for fraud.** If any portion of the deficiency is due to fraud with intent to evade tax, a penalty of fifty (50) percent shall be added, collected, and paid.

(k) **Waiver of penalty; interest.** At the discretion of the Commission, the interest or penalty assessed, or both, may be waived provided the taxpayer can demonstrate that the failure to pay the tax when due is satisfactorily explained, or that the failure resulted from a mistake by the taxpayer of either law or fact, or that the taxpayer is unable to pay the interest or penalty due to insolvency. Requests for waiver or remission must be made in writing and must include all pertinent facts to support the request. [**See:** 68 O.S. §§ 217, 1365, 1405]

(l) **Remuneration.** When the use tax report with all required information included is timely filed, the vendor may deduct the applicable remuneration as an allowance to reimburse the vendor for the expenses incurred in keeping records, preparing and filing reports, and remitting tax to the Commission. The remuneration may not be deducted and is not available to a vendor who files an incomplete report or files his report after the date of delinquency or fails to make full payment on or before the due date.

[OAR Docket #06-971; filed 5-17-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 70. TOBACCO, TOBACCO PRODUCTS, AND CIGARETTES

[OAR Docket #06-1107]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 2. Cigarette Stamp Tax
Part 1. General Provisions
710:70-2-13. [NEW]
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n/a
ANALYSIS:
New Section 710:70-2-13 has been adopted to set a policy with respect to cigarette stamp requirements, applicable compact and non-compact tax rates and refund procedures relating to sales of packs of cigarettes to tribal retailer.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 2. CIGARETTE STAMP TAX

PART 1. GENERAL PROVISIONS

710:70-2-13. Stamps required, applicable compact and non-compact tax rates, and refund procedures relating to sales of packs of cigarettes to tribal retailers

(a) A compact tax stamp or a non-compact tax stamp must be affixed on each pack of cigarettes sold to tribal retailers in the rates and in the manner as set forth herein.

(b) For purposes of this Rule,

(1) "Pack" means a sealed, original package, containing twenty or twenty-five cigarettes, to which the required tax stamp is affixed; and

(2) "Compact tax rate" means the rate of payment in lieu of tax provided by compacts entered into between the State of Oklahoma and a federally recognized Indian tribe or nation at one of the following rates:

(A) $0.8575 for pack of twenty cigarettes or $1.071875 for pack of twenty-five cigarettes;

(B) $0.6075 for pack of twenty cigarettes or $0.759375 for pack of twenty-five cigarettes;

(C) $0.3075 for pack of twenty cigarettes or $0.384375 for pack of twenty-five cigarettes;

(D) $0.2575 for pack of twenty cigarettes or $0.321875 for pack of twenty-five cigarettes; or

(E) $0.0575 for pack of twenty cigarettes or $0.071875 for pack of twenty-five cigarettes.

(3) "Non-compact tax rate" means that tax rate provided by Section 349 of Title 68 at the following rate of $0.7725 for pack of twenty cigarettes or $0.965625 for pack of twenty-five cigarettes.

(4) "Tribal retailer" means a store or place of business which is duly licensed by a federally recognized Indian tribe or nation pursuant to tribal laws or ordinances to conduct business located on Indian country within the territorial jurisdiction of that tribe or nation.

(c) The compact tax stamp provided in Rule 710:70-7-4(1) shall only be sold at the rate of $0.8575 for pack of twenty cigarettes or the rate of $1.071875 for pack of twenty-five cigarettes. The rates shall be applicable for all sales to retailers licensed by a federally recognized Indian tribe or nation that has entered into a compact with the State of Oklahoma.

(d) The non-compact tax stamp provided in Rule 710:70-7-4(2) shall only be sold at the rate of $0.7725 for pack of twenty cigarettes or the rate of $0.965625 for pack of twenty-five cigarettes. The rate shall be applicable for all sales to tribal retailers owned and operated or licensed by a federally recognized Indian tribe or nation that has not entered into a compact with the State of Oklahoma.

(e) A federally recognized Indian tribe or nation that has entered into a compact with the State of Oklahoma may receive a refund for a portion of the rate paid pursuant to paragraph (c) of this rule. The amount of refund shall equal the rate paid less the compact tax rate applicable to the location of the tribal retailer provided in the tribal-state compact.

(f) All tribal retailers of a compacting tribe or nation shall keep the following documentation to claim a refund as provided herein. These records shall be submitted on behalf of the tribe or nation as its claim for refund. Such documentation may be submitted at any time to the Tax Commission in order to substantiate the refund claim for purchases made within one year of the filing of the claim. Such documentation shall include copies of invoices detailing the:

(1) Date of purchase;

(2) Name of the tribal retailer that purchased the packs of cigarettes;

(3) Name of wholesaler from whom the packs of cigarettes were purchased;

(4) Quantity of each denomination purchased; and

(5) The amount of compact tax rate paid by the tribal retailer.

(g) All documentation shall be sent to the Excise Tax Section/Audit Division of the Oklahoma Tax Commission at 2501 Lincoln Blvd, Oklahoma City, OK 73194. Upon review by the Audit Division, a refund will be remitted based on verifiable purchases qualifying for refund.

(h) Refunds shall be paid to the compacting tribe or nation on a monthly basis.

(i) Any refunds for packs of cigarettes purchased by a tribal retailer in excess of one hundred twenty percent (120%) of the total amount of packs of cigarettes purchased by the tribal retailer during the calendar year of 2004 shall only be paid if the tribal retailer provides documentation to the satisfaction of the Audit Division that the amount of packs of cigarettes purchased are or were offered for sale to consumers at the location of the tribal retailer.

[OAR Docket #06-1107; filed 5-26-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 70. TOBACCO, TOBACCO PRODUCTS, AND CIGARETTES

[OAR Docket #06-1112]

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710:70-2-11. [NEW]
710:70-2-12. [NEW]
Subchapter 5. Excise on Tobacco Products
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710:70-5-13. [NEW]
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n/a
ANALYSIS:
New Section 710:7-2-9 has been adopted to reflect the provisions of Section 6 of Senate Bill 905 which deal with the necessity, cost and expiration date of cigarette licenses for vehicles where cigarettes are sold. **[68:304]**
New Section 710:70-2-11, has been adopted to set a policy with respect to record retention for cigarette retailers and distributors in accordance with 68 O.S. § 312.1 and to implement the provision of Section 7 of Senate Bill 905. **[68:312.1]**
New Section 710:70-2-12 has been adopted to set a policy with respect to the regulation of the sale of reduced tax rate cigarettes to improve compliance with and the enforcement of the provision of Article 3 of Title 68 and to insure the state's ability to collect the appropriate amount of taxes due. New Section 710:70-5-13 has been adopted to reflect the provisions of Section 8 of Senate Bill 905 dealing with the record retention requirements for tobacco products distributors and retailers. **[68:420.1]**
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 2. CIGARETTE STAMP TAX

PART 1. GENERAL PROVISIONS

710:70-2-9.1. Vehicle Cigarette Licenses

Vehicles from which cigarettes are sold constitute a "place of business" and are required to be permitted. If the vehicle is owned or operated by a place of business for which the regular Twenty-Five dollar fee has been paid the fee for the vehicle is to be $10.00 and the expiration date of the vehicle license permit is to be the expiration date of the permit issued to the other place of business.

710:70-2-11. Requirements placed on distributors and retailers to maintain copies of invoices

(a) Distributors shall keep copies of invoices or equivalent documentation for each of its facilities for every transaction in which the distributor is the seller, purchaser, consignor, consignee, or recipient of cigarettes. The invoices or documentation must show the name, address, phone number and wholesale license number of the consignor, seller, purchaser, or consignee, and the quantity by brand style of the cigarettes involved in the transaction. [68 O.S.§ 312.1(E)].
(b) Retailers shall keep copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases cigarettes at each of its facilities. The invoices or documentation must show the name and address of the distributor from whom, or the address of another facility of the same retailer from which, the cigarettes were received, the quantity of each brand style received in such transaction and the retail cigarette license number or sales tax license number. [68 O.S. § 312.1(F)].
(c) The invoices or equivalent documentation must be kept on the premises described in the license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the Oklahoma Tax Commission. With the permission of the Tax Commission, manufacturers, distributors, and retailers with multiple places of business may retain centralized records, but must transmit duplicates of the invoices or the equivalent documentation to each place of business within twenty-four (24) hours upon the request of the Tax Commission. Written requests for permission to keep centralized records should be submitted to the Audit Division of the Oklahoma Tax Commission by mail at 2501 Lincoln Blvd., Oklahoma City, Ok 73194 or by FAX at (405) 522-4450. [68 O.S. § 312.1(H)].
(d) The invoices or equivalent documentation must be retained for a period of three (3) years from the date of the transaction. [68 O.S. § 312.1(I)].

710:70-2-12. Limitation on sale of number of packs of cigarettes at a reduced tax rate

(a) Sales of cigarettes by a wholesaler licensed by the Oklahoma Tax Commission (hereafter, "Wholesaler") to a tribal retailer shall be limited as set forth herein to the number of packs of cigarettes sold at a "reduced tax rate".
(b) For purposes of this Rule,
(1) "Pack" means a sealed, original package, containing twenty or twenty-five cigarettes, to which the required tax stamp is affixed; and
(2) "Reduced tax rate" means the tax rate provided by Section 349 of Title 68 and the fees in lieu of tax provided by compacts entered into between the State of Oklahoma and a federally recognized Indian tribe or nation at one of the following rates:
(A) $0.0575 for pack of twenty cigarettes or $0.071875 for pack of twenty-five cigarettes;
(B) $0.6075 for pack of twenty cigarettes or $0.759375 for pack of twenty-five cigarettes;
(C) $0.3075 for pack of twenty cigarettes or $0.384375 for pack of twenty-five cigarettes; or

(D) $0.2575 for pack of twenty cigarettes or $0.321875 for pack of twenty-five cigarettes.

(3) "Tribal retailer" means a store or place of business which is duly licensed by a federally recognized Indian tribe or nation pursuant to tribal laws or ordinances to conduct business located on Indian country within the territorial jurisdiction of that tribe or nation.

(c) No Wholesaler may sell packs of cigarettes at a reduced tax rate to any tribal retailer, unless the name of the tribal retailer appearing on the order and/or invoice to be issued on the transaction also appears on the list of tribal retailers compiled and furnished by the Oklahoma Tax Commission (hereafter, "OTC") to licensed wholesalers. For purposes of compliance with this Rule, wholesalers are entitled to rely on the accuracy of the list of tribal retailers compiled and furnished by the OTC.

(d) No Wholesaler may sell to any tribal retailer, in any one calendar month, packs of cigarettes at a reduced tax rate in a quantity which exceeds one-twelfth (l/12th) of a sum equal to the total amount of packs of cigarettes sold by the Wholesaler to that tribal retailer in calendar 2004, plus 10%; provided, however, that upon request to the OTC, proposed sales in excess of the allowance may be permitted upon a showing of good cause, which must include documented proof that the tribal retailer attempting the purchase has or will offer the packs of cigarettes for sale to consumers at the location of the tribal retailer.

(e) The OTC shall furnish each Wholesaler, from reports filed by that wholesaler with the OTC for calendar 2004, a computation of the amount of packs of cigarettes which may be sold at a reduced tax rate to each tribal retailer to which Wholesaler sold cigarettes in calendar 2004, unless an increased allowance is requested and granted under the procedures specified by paragraph (d) hereof.

(f) In the event that a Wholesaler desires to sell to a tribal retailer that it did not sell to in calendar 2004, the Wholesaler shall request from the OTC a computation of the amount of packs of cigarettes purchased by the tribal retailer in calendar 2004. The request shall be accompanied by the written consent of the tribal retailer to disclose the statistical information furnished by Wholesalers concerning the tribal retailer (the original of which shall be retained in Wholesaler's records, and a copy of which shall be faxed to the OTC at 405-521-2146). The OTC will furnish the Wholesaler with a computation of the amount of packs of cigarettes that may be sold to such tribal retailer at a reduced tax rate, unless an increased allowance is requested and granted under the procedures specified by paragraph (d) hereof.

(g) In the event that a Wholesaler desires to sell to a tribal retailer that was not in business in calendar 2004, before selling any packs of cigarettes to such tribal retailer, the Wholesaler shall contact the OTC, which will provide a statement of the number of packs of cigarettes which may be sold at a reduced rate, based upon the average, per Wholesaler, per tribal retailer in calendar 2004, plus 10%; in the event the tribal retailer claims such amount to be insufficient, an increased allowance may be requested under the procedures specified by paragraph (d) hereof.

(h) Wholesalers shall telephonically report and confirm in writing to the OTC, on the same day as received, any request of a tribal retailer for purchase of packs of cigarettes at a reduced tax rate, in a quantity which exceeds one-twelfth (1/12th) of a sum equal to the total amount of cigarettes sold to that tribal retailer by the Wholesaler in calendar 2004, plus 10%.

(i) Wholesalers are subject to revocation of their cigarette and/or tobacco products licenses, sales tax permits and any other licenses or permits issued to such wholesalers by the OTC, upon the determination that such wholesalers have violated any of the provisions of this Section, and/or any other State Tax Law and/or Commission Rule applicable to such wholesalers. Such licensure revocation is in addition to, and not to the exclusion of any other remedies of the OTC, inc1uding, by way of example and not limitation, liability for the cigarette stamp tax or compact payment in lieu thereof upon sales of cigarettes to tribal retailers at rates which are in violation of this Section.

(j) If any Wholesaler files a Cigarette Stamp Tax Report, which evidences a sale of packs of cigarettes to a tribal retailer not included on the list of tribal retailers provided the Wholesaler by the OTC, such sale shall be presumed not to constitute a sale to a tribal retailer, as defined herein, and Wholesaler shall be responsible and liable for payment of tax at the non-tribal statutory rate for all packs of cigarettes reported sold. In addition, Wholesaler is subject to imposition of an administrative penalty not exceeding 500% of the unpaid tax or payment in lieu of tax as to each pack sold. [68 O.S. § 350(A), § 324, and § 346(C)(1); 68 O.S. § 316(I)].

SUBCHAPTER 5. EXCISE ON TOBACCO PRODUCTS

710:70-5-13. Requirements placed on distributors and retailers to maintain copies of invoices with certain information that must be shown on each invoice

(a) Distributors of tobacco products, as defined in 68 O.S. § 401, shall keep copies of invoices or equivalent documentation for each of its facilities for every transaction in which the distributor is the seller, purchaser, consignor, consignee, or recipient of tobacco products. The invoices or documentation must contain the distributor's tobacco license number and the quantity by brand style of the tobacco products involved in the transaction. [68 O.S. Section 420.1(A)]

(b) Retailers of tobacco products, as defined in 68 O.S. § 401, shall keep copies of invoices or equivalent documentation for every transaction in which the retailer receives or purchases tobacco products at each of its facilities. The invoices or documentation must show the name and address of the distributor from whom, or the address of another facility of the same retailer from which, the tobacco products were received, the quantity of each brand style received in such transaction, and the retail cigarette license number or sales tax license number. [68 O.S. § 420.1(B)]

(c) The invoices or equivalent documentation must be kept on the premises described in the license in such a manner as

to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the Oklahoma Tax Commission. With the permission of the Tax Commission, manufacturers, distributors, and retailers with multiple places of business may retain centralized records, but must transmit duplicates of the invoices or the equivalent documentation to each place of business within twenty-four (24) hours upon the request of the Tax Commission. Written requests for permission to keep centralized records should be submitted to the Audit Division of the Oklahoma Tax Commission by mail at 2501 Lincoln Blvd., Oklahoma City, Ok 73194 or by FAX at (405) 522-4450.

(d) The invoices or equivalent documentation must be retained for a period of three (3) years from the date of the transaction.

[OAR Docket #06-1112; filed 5-26-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 85. VARIOUS TAX INCENTIVES

[OAR Docket #06-1111]

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Subchapter 7. Oklahoma Film Enhancement Rebate Program
710:85-7-3. [AMENDED]
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68 O.S. § 203; Oklahoma Tax Commission
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Section 710:85-7-3 has been amended to implement the provisions of Section 15 of House Bill 1547 (2005) which provides that the amount of payments made pursuant to the Oklahoma Enhancement Rebate Program shall not exceed Five Million Dollars ($5,000,000.00) in any single fiscal year
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 7. OKLAHOMA FILM ENHANCEMENT REBATE PROGRAM

710:85-7-3. Procedure upon qualification; payment

(a) **Procedures upon approval by Office.** Upon notification to the Commission of each approved claim by the Office, the Commission will verify:

(1) That the claim of the production company contains an affidavit stating that the company has not received an exemption from sales taxes pursuant to the provisions of 68 O.S. Section 1357(21); and,

(2) That an Oklahoma income tax return has been filed by the claimant for the tax year in which the production expenses were made.

(b) **When repayment of taxes may be required.** If the facts set out in (a) of this Section cannot be verified, then the Commission shall require repayment of previously exempted sales taxes, and documentation that the taxes have been repaid shall be included in the claim.

(c) **Payment of claims.** Upon approval of the claim by the Office and processing by the Commission, the Commission shall issue payment for all approved claims from funds in the "Fund"~~.~~ on or after July 1, 2006, and on or after each July 1 thereafter following the fiscal year in which the documented expenditures were made. The amount of payments in any single fiscal year shall not exceed ~~Two~~ Five Million Dollars ~~($2,000,00.00)~~ ($5,000,000.00). If the amount of approved claims exceeds the amount ~~of funds available for rebate payments in the Fund~~ specified in this Section~~, or if payment will cause total payments from the Fund to exceed Two ($2,000,000.00)~~ in ~~the~~ a fiscal year, ~~then the payment may be made in part, if funds exist to do so~~, then the payments will be made in the order in which claims are approved by the office and any remaining approved claims will be carried over to the next fiscal year, subject to the same limitations for that year as set out in this Section.

[OAR Docket #06-1111; filed 5-26-06]

TITLE 710. OKLAHOMA TAX COMMISSION
CHAPTER 90. WITHHOLDING

[OAR Docket #06-1109]

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PERMANENT final adoption
RULES:
Subchapter 3. Returns and Payments
710:90-3-4. [AMENDED]
710:90-3-11. [AMENDED]

710:90-3-15. [AMENDED]
710:90-3-17. [AMENDED]

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ANALYSIS:
Sections 710:90-3-4 and 710:90-3-15 have been amended to conform with the provisions of Section 20 of Senate Bill 905 enacted into law by the 50th Legislature, 1st Regular Session, effective July 1, 2006 which modified Section 2385.3 of Title 68 of the Oklahoma Statutes changing the due date for timely filing of monthly tax reports and paying withholding tax from the fifteenth day of the month to the twentieth day of the month. [68:2358.3]

Section 710:90-3-17 has been amended to conform with the provisions of Section 21 of Senate Bill 905 which modified the levy of penalty on delinquent withholding taxes from a graduated twenty-five percent (25%) penalty to a one-time penalty of ten percent (10%). [68:2385.6]

Section 710:90-3-11 has been amended to conform with the provisions of Senate Bill 293 which repealed the Registration of Out-Of-State Attorneys Act 5 O.S. Supp. 2004 Section 1.1 through 1.9, effective April 6, 2005.

CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. RETURNS AND PAYMENTS

710:90-3-4. Filing of tax returns

(a) Every employer required to deduct and withhold Oklahoma Income Tax from employee wages shall file a quarterly return and remit the tax withheld to the Commission on or before the ~~fifteenth (15th)~~ twentieth (20th) day of the month following the close of each quarter. Quarterly returns shall be filed on a calendar year basis and not a fiscal year basis.

(b) Except as specified in subsection (c), if the amount of Oklahoma Income Tax withheld exceeds Five Hundred Dollars ($500.00) for any quarter, the employer is required to file and remit the taxes withheld monthly, for each monthly period after the quarter in which taxes withheld exceeded Five Hundred Dollars ($500.00). Such monthly reports shall be due on or before the ~~fifteenth (15th)~~ twentieth (20th) day of each succeeding month.

(c) Every employer owing an average of Ten Thousand Dollars ($10,000.00), or more, per month in taxes for the previous fiscal year, shall pay over the amount so withheld on the same dates as required under the Federal Semiweekly Deposit Schedule for federal withholding taxes.

(1) Employers exceeding the Ten Thousand Dollar threshold will be notified annually in writing by the Commission to begin payments under the Federal Semiweekly Deposit Schedule.

(2) For employers making payments other than by electronic funds transfer, a withholding payment voucher shall be filed with each payment.

(3) For employers making payments by electronic funds transfer, a withholding return shall not be required to be filed with each payment. A withholding return for payments made by electronic funds transfer shall be filed monthly on or before the ~~fifteenth~~ twentieth day of the month following the close of each monthly period.

(4) If a payment is required to be made on a day that is not a banking day, the payment is considered timely if it is made by the close of the next banking day. In addition to Federal and State bank holidays, Saturdays and Sundays are treated as non-banking days.

(5) Semiweekly schedule employers have at least three (3) banking days to make a payment. If any of the three (3) weekdays after the end of a semiweekly period is a banking holiday, the employer will have one (1) additional banking day for payment.

(d) An employer, who because of an unusual and nonrecurring event or occurrence withholds Five Hundred Dollars ($500.00) or more for any quarter, may apply to the Commission for permission to remain on a quarterly filing frequency status. To qualify, the employer must substantiate that such occurrence is not an accurate reflection of the normal or expected future amounts to be withheld. Employer filing records must substantiate that for the four (4) consecutive quarters preceding the occurrence, Oklahoma Withholding Tax liability has been less than Five Hundred Dollars ($500.00) each quarter. It should be clearly understood that a change from monthly to quarterly filing cannot be commenced until official permission from the Commission is received in writing.

(1) There are certain conditions that could cause denial or revocation of this authorization by the Commission:

(A) If the employer is or becomes delinquent in either the filing of the return or the payment of the taxes due thereon; or

(B) In the event that for any subsequent quarterly period the liability of an employer who has been authorized to file returns and to make payments quarterly exceeds Five Hundred Dollars ($500.00) in Withholding Tax for any one quarter; or

(C) In the event that the Commission determines that any such quarterly filing or return any payment of

tax due thereon would unduly jeopardize the proper administration of the Oklahoma Withholding Tax Law.

(2) If the Commission decides it is necessary to revoke the authorization to file quarterly in relation to any of the conditions in (1) of this subsection, the taxpayer will be required to file returns and pay the tax due on a monthly basis.

(e) Any returns and remittances not filed or paid on or before the date due shall be considered delinquent.

(f) Every employer registered with the Commission for purposes of reporting and remitting withheld taxes shall file a return for each reporting period required, whether or not wages subject to Oklahoma Withholding Taxes are paid, unless otherwise provided. On the return for such a reporting period, the employer should indicate that zero wages were paid and that no tax is due. [**See:** 68 O.S. Section 2385.3]

710:90-3-11. Income tax withholding for pass-through entities

(a) **General provisions.** Generally, any pass-through entity that makes a distribution to a non-resident member is required to deduct and withhold Oklahoma income tax from distributions of taxable income being made with respect to Oklahoma source income.

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

(1) **"Member"** means:

(A) A shareholder of an S-Corporation;

(B) A partner in a general partnership;

(C) A partner in a limited partnership;

(D) A partner in a limited liability partnership;

(E) A member of a limited liability company; or,

(F) A beneficiary of a trust.

(2) **"Non-resident"** means an individual who is not a resident of, or domiciled in, this state; a business entity which does not have a commercial domicile in this state; or a trust which is not organized in this state.

(3) **"Pass-through entity"** means:

(A) A corporation that is treated as an S-Corporation under the Internal Revenue Code;

(B) A general partnership;

(C) A limited partnership;

(D) A limited liability partnership;

(E) A trust; or,

(F) A limited liability company that is not taxed as a corporation for federal income tax purposes. [68 O.S. § 2385.29]

(4) **"Pass-through entity"** does not include an entity which is disregarded for income tax purposes under the Internal Revenue Code.

(c) **S-Corporations; general, limited, or limited liability partnerships; limited liability companies.** In the case of S-Corporations; general, limited, or limited liability partnerships; and limited liability companies, withholding of five percent (5%) is required on the Oklahoma portion of the taxable income distributed to each non-resident member. In the case of S-Corporations paying the tax on behalf of non-resident shareholders (68 O.S. § 2365) or partnerships filing composite returns on behalf of non-resident partners, the non-resident members withholding can be claimed on the return filed by the S-Corporation or the partnership.

(d) **Trusts.** For trusts, withholding of five percent (5%) is required on the Oklahoma portion of the taxable income distributed to each beneficiary of the trust.

(e) **Non-resident members not subject to withholding.** The following persons and organizations are not subject to required withholding by a pass-through entity:

(1) Persons, other than individuals, who are exempt from federal income tax;

(2) Organizations granted an exemption under Section 501(c)(3) of the Internal Revenue Code;

(3) Insurance companies subject to the Oklahoma Gross Premiums Tax and therefor exempt from Oklahoma income tax pursuant to 68 O.S. § 2359(c); and

(4) Non-resident members who have submitted an affidavit (OTC Form OW-15) to the pass-through entity and which pass-through entity has submitted the affidavit information on behalf of the member to the Tax Commission. In the affidavit, the non-resident member agrees to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, together with any related interest and penalties. See (k) of this Section for the procedure to be followed in filing the affidavit.

(A) For non-resident partners included in a composite partnership return under *OAC* 710:50-17-17 and filing OTC Form OW-15, the inclusion of the partners' income within the composite partnership return will satisfy the requirements contained in the affidavit.

(B) For non-resident shareholders filing OTC Form OW-15, and electing not to file Oklahoma income tax returns under 68 O.S. § 2365, inclusion of the non-resident shareholder's income in the Subchapter S corporate income tax return will satisfy the requirements contained in the affidavit.

(C) For non-resident beneficiaries included in a trust return and filing OTC Form OW-15, the inclusion of the beneficiary's income within the trust return will satisfy the requirements contained in the affidavit.

(f) **When pass-through entities are not required to withhold.** Withholding is not required in the following instances:

(1) When an entity is not required to file a federal income tax return, or properly elects out of such duty;

(2) When a pass-through entity is making distributions of income not subject to Oklahoma income tax;

(3) When a pass-through entity has withheld tax on royalty interest income pursuant to 68 O.S. § 2385.25 et seq.;

~~(4) When a pass-through entity is making distributions subject to the withholding requirements for non-resident~~

~~attorneys set out in 5 O.S.Supp.2004, § 1.6 and Commission rule 710:95-13-1, and the pass-through entity is withholding accordingly;~~

(~~5~~4) When a pass-through entity is making distributions to another pass-through entity. Provided however, the exception set out in this paragraph does not relieve the lower-tiered pass-through entity from the duty to withhold on distributions it makes which are not otherwise exempt;

(~~6~~5) When a pass-through entity is a publicly traded partnership, as defined by Section 7704(b) of the Internal Revenue Code, and is treated as a partnership for purposes of the Internal Revenue Code. Provided the publicly traded partnership has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit-holder with an income in the state in excess of Five Hundred Dollars ($500.00); or,

(~~7~~6) When a distribution made by a pass-through entity has been determined to be not subject to the provisions of this Section by the Commission.

(g) **Due dates for payment of pass-through entity withholding.** Pass-through entities that withhold income tax on distributions of taxable income to non-resident members are required to remit the amount of tax withheld from each non-resident member on or before the due date of the pass-through entity's income tax return, including extensions. Any pass-through entity that can reasonably expect the total amount of income tax withheld from all non-resident members to exceed Five Hundred Dollars ($500.00) for the taxable year **must** make quarterly estimated tax payments. OTC Form OW-9-EW is to be used to remit the quarterly estimated tax payments. The required estimated tax payments are due on or before the last day of the month after the end of the calendar quarter and must be made in equal quarterly installments. The total of the required quarterly estimated tax payments is the lesser of seventy percent (70%) of the withholding tax that must be withheld for the current taxable year, or one hundred percent (100%) of the withholding tax withheld for the previous taxable year. Any pass-through entity that can reasonably expect the total amount of tax withheld from all non-resident members to be less than Five Hundred Dollars ($500.00) for the taxable year may, *at their option*, make quarterly estimated tax payments.

(h) **Required reports.** The pass-through entity is required to provide non-resident members and the Oklahoma Tax Commission an annual written statement showing the name of the pass-through entity, to whom the distribution was paid, the amount of taxable income distributed, and the amount of Oklahoma income tax withheld. Further, the statement must also furnish the non-resident member's name, address, and social security number or Federal Employer Identification Number. To accomplish this:

(1) Each pass-through entity must provide non-resident members with Oklahoma Tax Commission Form 500-B, (OTC Form 500-B), on or before the due date of the pass-through entity's income tax return, including extensions. Copies of OTC Form 500-Bs, along with OTC Form 501, must be sent to the Oklahoma Tax Commission by the same date.

(2) Each pass-through entity must file with the Oklahoma Tax Commission the appropriate income tax withholding return (OTC Form OW-9-C) on or before the due date of the pass-through entity's income tax return, including extensions.

(3) Each non-resident member must enclose a copy of OTC Form 500-B to the Oklahoma income tax return as verification for this withholding.

(i) **Non-resident members entitled to credit, or refund, from Oklahoma income taxes paid.** Any non-resident member from whom an amount is withheld pursuant to the provisions of this Section, and who files an Oklahoma income tax return is entitled to a credit for the amount withheld. If the amount withheld is greater than the tax due, the non-resident member will be entitled to a refund of the amount of the overpayment.

(j) **Pass-through entities must register.** Pass-through entities that make distributions subject to Oklahoma withholding must register with the Oklahoma Tax Commission.

(k) **Affidavit filing procedures.** Non-resident members who elect to file an affidavit (OTC Form OW-15) agreeing to be subject to the personal jurisdiction of the Tax Commission in the courts of this state for the purpose of determining and collecting any Oklahoma taxes, including estimated tax payments, and any related interest and penalties, must remit the affidavit to the appropriate pass-through entity. The pass-through entity is to retain the affidavit and file the following information with the Oklahoma Tax Commission by the due date of the required annual tax return of the pass-through entity.

(1) **Content.** The name, address, and social security number or federal identification number of the non-resident member having a signed OTC Form OW-15. All pass-through entities are required to file the non-resident member affidavit information on a diskette or CD with the Oklahoma Tax Commission - Audit Division.

(2) **Format.** The format for filing the diskette or CD will be in either a spreadsheet format (i.e. Lotus 1-2-3 or Excel) or a database format (i.e. dbf or Access).

(3) **Waiver.** Pass-through entities may obtain a waiver from the diskette or CD filing requirement if the pass-through entity can demonstrate that a hardship would result if it were required to file on a diskette or CD. Direct waiver requests to the Oklahoma Tax Commission - Audit Division.

710:90-3-15. Payments; due dates

Remittances covering the Oklahoma Withholding Tax liability payable to the Commission shall accompany the monthly or quarterly Withholding Tax Return, on or before the ~~fifteenth (15th)~~ twentieth (20th) day of the month following the close of such monthly or quarterly reporting period. If an employer fails to file a return or to pay the Commission the tax when due, the tax will be considered delinquent and penalty and interest will be collected.

710:90-3-17. Penalty and interest

(a) If an employer fails to file a return or to pay the Commission the Withholding Tax when due, there shall be imposed on such employer a penalty of ~~five percent (5%)~~ ten percent (10%) of the amount of tax, or ~~five percent (5%)~~ ten percent (10%) of the amount of the underpayment of tax, if such failure is not corrected on or before the last day of the month when due~~, with an additional five percent (5%) for each additional month or fraction thereof during which such failure continues, not to exceed twenty-five percent (25%) in the aggregate~~.

(1) There is also imposed upon the employer interest at the rate of one and one-quarter percent (1 1/4%) per month.

(2) If any portion of the deficiency is due to fraud with intent to evade tax, a penalty of fifty percent (50%) shall be assessed.

(b) At the discretion of the Commission, the interest or penalty may be waived, provided the taxpayer's failure to file a report or return or to pay the tax is satisfactorily explained or provided the taxpayer can demonstrate that the failure to pay the tax resulted from a mistake by the taxpayer of either law or fact or inability to pay such interest or penalty resulting from insolvency. Requests for waiver must be made in writing to the ~~Director of the Business Tax~~ Account Maintenance Division and must include all pertinent facts to support the request.

[OAR Docket #06-1109; filed 5-26-06]

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

[OAR Docket #06-893]

RULEMAKING ACTION:
PERMANENT final adoption
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]
AUTHORITY:
27A O.S. § 2-11-401.6, 68 O.S § 203; Oklahoma Tax Commission
DATES:
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
Existing Sections 710:95-5-2; 710:95-5-13; 710:95-5-14; 710:95-5-20 and 710:95-5-21 have been amended and New Section 710:95-5-22 has been adopted to conform to the provisions of House Bill 1606. 710:95-5-2 was modified to reflect the definition of the term "Tire Derived Fuel Facility" and the amended definition of "Waste Tire Facility" and "Waste Tire Processing". 710:95-5-13 has been amended to reflect modified procedures for Waste Tire and Tire Derived Fuel facilities to receive compensation for certain waste tire activities. 710:95-5-14 has been amended to reflect the modified procedures for businesses that utilize waste tires to request compensation. 710:95-5-20 has been amended to reflect the modified procedures for entities to request compensation for waste tires used in certain environmental projects. 710:95-5-21 has been amended to reflect the modified procedures for local governmental units to request compensation for tires that are baled and used in approved engineering projects. New Section 710:95-5-22 has been adopted to reflect the apportionment of and compensation from the Waste Tire Indemnity Fund. **[27A:2-11-401.1 and 27A:2-11-401.4]**

Subchapter 13 and Section 710:95-13-1 dealing with out-of-state attorney registration has been revoked consistent with Senate Bill 293 which repealed the Registration of Out-of-State Attorneys Act, 5 O.S. Supp. 2004 Sections 1.1 through 1.9, effective April 6, 2005.
CONTACT PERSON:
Lisa R. Haws, Tax Policy Analyst, Tax Policy and Research Division, Oklahoma Tax Commission, 2501 North Lincoln Boulevard, Oklahoma City, Ok 73194, 405-521-3133.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. WASTE TIRE RECYCLING

710:95-5-2. Definitions

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

"Commission" means the Oklahoma Tax Commission.

"DEQ" means the Oklahoma Department of Environmental Quality.

"ODH" means the Oklahoma Department of Health.

"Tire-derived fuel facility" or "TDF facility" means a facility that uses processed tires or whole waste tires for energy or fuel recovery.

"Waste tire facility" means any place which is permitted as a solid waste disposal site, in accordance with the Oklahoma Solid Waste Management Act, at which waste tires are processed.

"Waste tire processing" means ~~*the preparation of waste tires to facilitate use for recycling, reuse, energy or fuel recovery, including the cleaning, sorting, and delivery of whole tires,*~~

~~*in a ready-to-use condition, to businesses that utilize processed tires for energy or fuel recovery.*~~ altering the form of whole waste tires by shredding, chipping, or other method approved by the department, except baling. [27A O.S.Supp.~~2001~~ 2005, ~~§2-11-402(6)~~ §2-11-401.1]

710:95-5-13. Procedure to be used by waste tire facilities and "TDF facilities" to request compensation for the collection and transportation of waste tires and either the processing and sale of processed waste tires or the use of the tires as fuel or for the manufacture of new products.

(a) **General provisions.** In order to be compensated from the Waste Tire Recycling Indemnity Fund, a properly permitted waste tire facility must make application to the Commission, no more often than monthly, on forms prescribed for that purpose. ~~The application for compensation shall provide the information described in (1) through (11) of this subsection:~~

~~(1) Number of tires transported from dealers during the period covered by the request;~~

~~(2) Number of tires transported from dumps during the time covered by the request;~~

~~(3) Number of tires transported from community-wide clean-up campaigns during the time covered by the request;~~

~~(4) Total number of tires collected from automotive dismantlers and parts recycler where the verification and proof of purchase meets the guidelines set out by the DEQ;~~

~~(5) Total number of tires on which compensation for collection and transportation is requested;~~

~~(6) Total number pounds of processed materials produced and total number of tires processed this period;~~

~~(7) Except for those facilities that use processed tires for energy or fuel recovery, the total amount of compensation requested for processing shall equal the total number of tons of processed material times Forty-nine Dollars ($49.00);~~

~~(8) For those businesses that use processed tires for energy or fuel recovery, the total amount of compensation requested shall equal the total number of tons of processed material times Twenty-nine Dollars ($29.00);~~

~~(9) The number of pounds of processed material and the number of tires currently on hand at their processing facilities or any other location where the person seeking compensation holds either title or possession to the processed material;~~

~~(10) The sum of the tires processed for the preceding 36 months from the facility in Oklahoma; and~~

~~(11) The amount of any material sold or transferred if either title or possession of the processed material which was sold or transferred, changed from the processor to another person during the period for which compensation is claimed, along with copies of any invoices, bills of lading, or any other documentation which shows the terms of the sale or transfer.~~

(b) **Magnetic media requirements.** A magnetic media file, containing the information required to be filled in on the Waste Tire Reimbursement Manifest, must be submitted with the application.

(c) **Required supporting documentation.** Until the Commission authorizes otherwise in writing, a data sheet must be submitted, to which are attached copies of manifests showing the information described in (1) through (3) of this subsection:

(1) **Identification of tires.** The data sheet must state the date acquired, number, and size of tires;

(2) **Sources of tires.** The name and the location of the source from which discarded tires were obtained, whether they were collected and transported by the waste tire facility or not, must be provided. Sources may include:

(A) Tire dealers;

(B) Persons making voluntary payments pursuant to 710:95-5-12;

(C) Priority clean-up sites;

(D) Community-wide clean-up events; or

(E) Automotive dismantlers and parts recyclers.

(3) **Signature from source required.** The signature of the owner, manager, or the person responsible for the location where the tires were obtained, or the signature of the person who brought the tires to the facility, if they were not collected and transported by the facility, must be submitted on the manifest, data sheets, or on supporting documentation.

(d) **Accuracy of manifests and tire weights.** The manifests required by this Section must be complete and accurate in all details and must be accompanied by weight tickets from certified scales which show the poundage of the load collected and transported or accepted for processing by the waste tire facility.

(e) **Inaccurate, incomplete, or insufficient manifest.** The Commission shall not compensate waste tire facilities for tires which are processed where the manifests for those tires are incomplete, unreadable, not accompanied by a weight ticket, or in any other respect cannot be relied upon to show that the tires were collected, transported and processed pursuant to the Waste Tire Recycling Act.

(f) **Reimbursable processing of tires limited to those discarded in Oklahoma.** The compensation request shall also state that the processor making the request is in compliance with and has successfully processed vehicle tires which were discarded by the consumer in Oklahoma, not some other state.

(g) **Other required information.** Additional documentation or information may be required by the Commission.

(h) **Sworn signature required.** The application must be signed by an officer, owner, or partner of the processor, stating under penalty of perjury, that all the information contained in the request is true and correct.

710:95-5-14. Procedure to be used by businesses that utilize waste tires ~~manufacture new products or derive energy benefits from processed waste tire material~~ to request compensation

(a) **Qualification.** Businesses that ~~either manufacture new products or derive energy benefits from~~ utilize waste tires ~~which have been processed by waste tire facilities~~ shall be qualified to apply for compensation, not to exceed the total

amount invested in capital equipment necessary to utilize processed waste tires, pursuant to this Section.

(b) **Limitations.** The following limitations shall apply to compensation paid pursuant to this Section.

(1) The compensation shall be payable each month for an amount equal to $20.00 per ton of ~~processed~~ waste tires used. ~~consumed in the manufacturing process of making new products or used in processes which derive energy benefits from processed waste tires.~~

(2) The total amount a business may receive in compensation is an amount not in excess of One-Hundred percent (100%) of its capital investment in equipment necessary to utilize ~~processed~~ waste tires, provided no compensation shall be payable for capital investment in equipment which was purchased before January 1, 1995.

(3) If the funds available for any month are not sufficient to fully pay all requests for compensation, the available funds will be awarded on a proportionate share of the funds available and based on the relative amount of tons of ~~processed~~ waste tires ~~consumed~~ utilized.

(4) If the balance of the monies remaining which have been allocated for the purpose of compensating businesses that manufacture new products or which derive energy benefits from processed waste tires is insufficient to fully compensate all claimants for a particular month, they shall be compensated in the manner set out in (b)(3) of this Section and no further compensation shall be granted in the future for the processed waste tires on which compensation was previously requested.

(c) **Application process.** All persons who believe that they do qualify or will qualify for compensation shall file an application/intent to request compensation with the Commission on forms to be provided by the Commission and shall include as attachments, specification of the ~~manufacturing~~ operation that utilizes waste tires, ~~or energy recovery process, a complete description of the product to be manufactured or a description of the use which will be made of the energy benefit,~~ a listing of the equipment and the capital investment therein which is necessary to utilize processed waste tires which they believe qualifies to be included in the amount on which compensation will be based, and copies of purchase invoices which show the cost of the equipment listed.

(d) **Review.** The application will be reviewed upon receipt for completeness and compliance with the requirements contained in 27A O.S. ~~§ 2-11-405~~ §2-11-401.4. An on-site review will be conducted by personnel of the Commission if it is deemed necessary to determine that the equipment is necessary to the utilization of processed waste tires. The applicant will be notified of any action taken in regard to the application, and if approved, will be given a list of the capital equipment and the costs which the Commission has determined to be eligible for compensation.

710:95-5-20. Procedures to request compensation for use by entities which process and utilize waste tires in erosion control, bank stabilization or other conservation projects

(a) **General provisions.** To be eligible for reimbursement pursuant to 27A O.S. ~~§2-11-407.1~~ §2-11-401.7(c)(3), the entity seeking reimbursement must give notice to the Commission and make application, no more often than monthly on forms, or in the format, prescribed for those purposes.

(b) **Notice of intent to file compensation request.** The applicant must file a "Notice of Intent to File Waste Tire Indemnity Fund Compensation Request" to which is attached, a copy of the permit issued by the United States Army Corps of Engineers or a local Conservation District and the written agreement of the landowner in which the landowner agrees to plant trees or other vegetation in accordance with a planting plan developed in conjunction with the state Department of Agriculture, Food and Forestry.

(c) **Contents of required affidavit.** The applicant must file an affidavit setting out:

(1) The number of tires having a rim diameter greater than 17 1/2" inches which were ~~processed by use~~ collected, transported and used in the approved project.

(2) The number of tires having a rim diameter of 17 1/2" inches or less which were ~~processed by use~~ collected, transported and used in the approved project.

(3) A sworn statement that ~~all~~ five percent (5%) of the tires ~~processed~~ used ~~by use~~ in the project ~~having a rim diameter of 17 1/2" inches or less~~ were ~~only~~ collected from tire dumps or landfills listed on the "Priority Cleanup List" defined at 27A O.S. ~~§ 2-11-402~~ §2-11-401.1, or collected from community-wide cleanup events approved by DEQ.

(4) A sworn statement that collection and transportation of waste tires ~~having a rim diameter greater than 17 1/2" inches~~ which were used in the project were collected on a statewide basis~~.~~ , from each county of the state, at no cost to the tire dealers.

(5) A statement that the tires for which reimbursement is being claimed have actually been used at the approved site in accordance with a written plan approved by the United States Army Corps of Engineers.

~~(6) A statement that the applicant has maintained records to show that all tires processed in accordance with the approved plan were collected from tire dumps, or landfills, as identified through placement on a priority enforcement list by the DEQ or from community wide cleanup events approved by DEQ.~~

(~~7~~ 6) A statement that the applicant is in compliance with the requirements promulgated by DEQ pursuant to the Oklahoma Environmental Quality Code regarding the storage, transportation and disposal of waste tires.

(~~8~~ 7) A statement that the applicant is in compliance with all tax laws of the state of Oklahoma.

(~~9~~ 8) A statement that the compensation shall be payable only for tires actually utilized in conformity with the purposes of the Oklahoma Waste Tire Recycling Act.

(~~10~~ 9) The total amount of compensation requested.

(d) **Supporting documentation.** Copies of complete, accurate, and legible Oklahoma Waste Tire Tracking Manifests showing the types, amounts, and source of the tires utilized, for which reimbursement is being requested, must accompany the affidavit.

(e) **Other information may be required.** Additional documentation may be required by the Commission.

(f) **Sworn signature required.** The affidavit required by (b) of this Section must be signed by an owner, officer, or partner of the processor, stating, under penalty of perjury, that all the information contained in the affidavit and request is true and correct.

(g) **Compensation.** Compensation pursuant to this paragraph shall be payable only for the tires collected and utilized in accordance with the purposes of the Oklahoma Waste Tire Recycling Act and as authorized by the Department. During the course of the erosion control project, the Department may determine the amount of and authorize partial compensation, as tires are utilized in accordance with the written plan.

(h) **Reimbursement.** Any entity deemed eligible for reimbursement under the provisions of this paragraph shall be liable for the erosion control project for a period of five (5) years. During the five-year period, if additional cleanup or remediation of an erosion control project is required due to failure or negligence on the part of the original contractor, the original contractor shall be responsible for cleanup costs and shall not be eligible for any additional compensation from the Fund for costs related to that erosion control project.

710:95-5-21. Procedure to be used by units of local or county government to request compensation for tires that are baled and used in approved engineering projects

(a) **General provisions.** In order to be compensated from the Waste Tire Recycling Indemnity Fund, a unit of local or county government must make application to the Commission, no more often than monthly, on forms prescribed for that purpose. The application for compensation shall provide the information described in (1) through (7) of this subsection.

(1) Number of tires covered by the application;

~~(2) Number of tires transported from dumps during the period of time covered by the application;~~

~~(3) Number of tires transported pursuant to community-wide clean-up campaigns during the time period covered by the application;~~

(~~4~~2) Total number of tires baled;

(~~5~~3) Total amount of compensation requested for processing, equal to the total number of tires baled times Fifty Cents ($ .50);

(~~6~~4) A description of the ~~approved~~ engineering project, a statement that the project has been approved by DEQ, and the location thereof; and,

(~~7~~5) A statement that none of the tires for which compensation is being requested has been obtained from manufacturers, retailers, wholesalers, retreaders, or parts dismantlers.

(b) **Other required information.** Additional documentation or information may be required by the Commission.

(c) **Sworn signature required.** The application must be signed by an employee of the government agency who has knowledge of the number of tires baled and of the approved engineering project, stating under penalty of perjury, that all the information contained in the application is true and correct.

710:95-5-22. Apportionment of funds among claimants

(a) **General provisions.** The apportionment of funds in the waste tire indemnity fund shall be made in the following manner:

(1) Four and one-half percent (4.5%) to the Oklahoma Tax Commission and three and one-half percent (3.5%) to the Department of Environmental Quality for the purpose of administering the requirements of the Oklahoma Waste Tire Recycling Act.

(2) Fifty Thousand Dollars ($50,000.00) per audit to the State Auditor and Inspector for the purpose of conducting audits of the Oklahoma Waste Tire Recycling Program pursuant to Section 2-11-401.6 of Title 27A.

(3) Up to ten percent (10%) for capital investment reimbursement to waste tire facilities and TDF facilities for the purchase of equipment necessary to utilize waste tires. Only equipment purchased on or after January 1, 1995, shall be eligible. The facilities are eligible for compensation at a rate of Twenty Dollars ($20.00) per ton of waste tires used. Total reimbursement shall not exceed one hundred percent (100%) of the capital investment in eligible equipment. The facilities may apply for compensation monthly to the Commission, and shall supply any information required by the Commission.

(4) After the allocations in the three paragraphs above are made, the balance of monies in the Fund shall be available for compensation pursuant to the provisions of the Oklahoma Waste Tire Recycling Act as follows:

(A) Compensation to waste tire facilities for waste tire processing, at the rate of Fifty-four Dollars ($54.00) per ton of processed tire material. For compensation the following conditions shall apply:

(i) facilities that process waste tires by altering the form of the waste tires but do not produce crumb rubber shall not receive compensation until the facility documents the sale and movement of the processed tire material off-site to a third party,

(ii) facilities shall report and certify tire processing activity in terms of weight. The facility shall by sworn affidavit provide to the Commission sufficient information to verify that the facility has processed tires and sold processed tires for actual recycling or reuse in accordance with the purposes of the Oklahoma Waste Tire Recycling Act, and

(iii) to be eligible for compensation, a facility shall not have accumulated more processed material than the amount for which the facility has provided financial assurance under its solid waste permit or the amount accumulated from three (3) years of operation, whichever is less;

(B) Compensation to waste tire facilities or TDF facilities at the rate of Fifty-three Dollars ($53.00) per ton of whole waste tires for the collection and transportation of waste tires from Oklahoma tire dealers, automotive dismantlers and parts recyclers, solid waste landfill sites, and dumps certified by the Department priority cleanup list, and delivering the tires to a waste tire facility or TDF facility. The collection and transportation of waste tires shall be provided by the waste tire facility or TDF facility at no additional cost to the tire dealer or automotive dismantler and parts recycler or to the Fund. The waste tire facility or TDF facility shall collect from any location at which there are at least three hundred waste tires.

(i) Compensation under paragraph B of subsection 4 shall not be payable until the waste tires have been actually processed according to the solid waste permit for the facility or actually used for energy or fuel recovery. A TDF facility that collects and transports whole waste tires shall be eligible for compensation under this paragraph only for those whole waste tires consumed by that facility.

(ii) No tire dealer shall charge any customer any additional fee for the management, recycling, or disposal of any waste tire upon which the waste tire recycling fee has been remitted to the Commission. For customers who choose not to leave a waste tire upon which the waste tire recycling fee has been remitted to the Commission, the tire dealer shall issue a receipt which entitles the customer to deliver the waste tire to the dealer at a later date.

(iii) To be eligible for compensation pursuant to paragraph B of subsection 4, the waste tire facility or TDF facility shall:

(I) demonstrate to the satisfaction of the Department that the facility is regularly engaged in the collection, transportation and delivery of waste tires to a waste tire facility or to a TDF facility, on a statewide basis, and from each county of the state,

(II) provide documentation to the Commission, signed by a dealer at the time of collection, which certifies by sworn affidavit the total amount of waste tire recycling fees, itemized by month, remitted by the dealer since the date the waste tires of the dealer were last collected, and

(III) annually demonstrate that at least five percent (5%) of the tires were collected from tire dumps or landfills on the Department priority cleanup list or community-wide cleanup events approved by the Department.

(iv) In lieu of proof of remitted tire recycling fees, the waste tire facility or TDF facility shall accept proof of purchase of a salvage vehicle registered in Oklahoma by an automotive dismantler and parts recycler, licensed pursuant to the Automotive Dismantlers and Parts Recycler Act, for the collection and transportation of up to five waste tires per salvage vehicle purchased on or after January 1, 1996

(C) Compensation to 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. Compensation shall be at the rate of Two Dollars and eighty cents ($2.80) per tire for waste tires having a tire rim diameter of greater than seventeen and one-half (17 1/2) inches, and eighty cents ($0.80) per tire for tires having a rim diameter less than or equal to seventeen and one-half (17 1/2) inches. The application for reimbursement shall comply with the provisions of Section 710:95-2-20.

(D) Compensation to a unit of local or county government. The application for reimbursement from the fund shall be in accordance with the provisions of Section 710:95-2-21.

(5) If the Fund contains insufficient funds in any month to satisfy the eligible reimbursements under paragraph (4), the Commission shall apportion the payments among the qualified applicants under paragraph (4) according to the percentage of waste tires processed, collected and transported, or utilized.

(6) After the allocations under paragraph (4) are made, any remaining monies in the Fund shall be available for TDF facilities and waste tire facilities that produce crumb rubber for compensation at the rate of Twenty-nine Dollars ($29.00) per ton of processed or whole waste tires used for energy or fuel recovery or the production of crumb rubber.

(A) The production of crumb rubber shall be considered a compensable event separate from and in addition to any compensation for waste tire processing under subsection C of this section.

(B) TDF facilities and waste tire facilities authorized to receive reimbursement under this subsection shall report and certify tire material used by weight.

(C) The facilities shall by sworn affidavit provide to the Commission sufficient information to verify that the facility has used the tires in accordance with the purposes of the Oklahoma Waste Tire Recycling Act.

(D) If the Fund contains insufficient funds in any month to satisfy the eligible reimbursements under this subsection, the Commission shall apportion the payments among the qualified applicants according to the percentage of waste tires used for energy or fuel recovery or the production of crumb rubber.

(7) After the allocations under paragraphs (3), (4) and (6) are made, any remaining monies in the Fund shall be disbursed as additional compensation to waste tire facilities or TDF facilities for the collection and transportation of waste tires from Oklahoma tire dealers, automotive dismantlers and parts recyclers, solid waste landfill sites, and

dumps certified by the Department priority cleanup list, and delivering the tires to a waste tire facility or a TDF facility. The Commission shall apportion the payments under this subsection among the qualified applicants according to the percentage of waste tires collected and transported.

(b) **Compliance with Oklahoma Waste Tire Recycling Act required.** Waste tire facilities, TDF facilities, or persons, corporations or other legal entities authorized by the provisions of the Oklahoma Waste Tire Recycling Act to receive reimbursement shall demonstrate that the facilities or legal entities have successfully complied with the requirements of the Oklahoma Waste Tire Recycling Act through the filing of appropriate applications, reports, and other documentation that may be required by the Commission and the Department. [68 O.S. 27A Sections 2-11-401.1 et seq.]

SUBCHAPTER 13. OUT-OF-STATE ATTORNEY REGISTRATION [REVOKED]

710:95-13-1. Out-of-State Attorney Registration [REVOKED]

~~(a) **Registration of out-of-state attorneys.** Every out-of-state attorney retained or engaged to provide any legal services in this state, as described in 5 O.S.Supp.2004, § 1.2, must register with the Oklahoma Tax Commission and obtain a Verification Letter.~~

~~(b) **Registration process.** Upon the application provided for in 5 O.S.Supp.2004, § 1.5 being granted by the Oklahoma Bar Association, the out of state attorney must submit a completed registration form, along with a copy of the Statement granting registration as an out-of state provider of legal services obtained from the Oklahoma Bar Association to the Taxpayer Assistance Division of the Oklahoma Tax Commission, either by mail at P.O. Box 26920, Oklahoma City, OK 73126-0920, or in person at 2501 Lincoln Blvd., Oklahoma City, Oklahoma 73194.~~

~~(c) **Registration forms.** Oklahoma Tax Commission registration forms will be provided by the Oklahoma Bar Association pursuant to its registration process. Additionally, the Tax Commission registration forms may be obtained from the Taxpayer Assistance Division of the Oklahoma Tax Commission, or online at www.oktax.state.ok.us.~~

~~(d) **Verification of registration.** Upon successful completion of its registration process, the Oklahoma Tax Commission will provide a Verification Letter and withholding tax return, **OTC Form OW-9-D**, to the out-of-state attorney. Notice of the Verification Letter will be provided to any associated Oklahoma attorneys. The out-of-state attorney is to provide a copy of **OTC Form OW-9-D** to the client, common fund, person, or entity paying for the legal services.~~

~~(e) **Withholding requirement.** A client, common fund, or any other person or entity paying for services of the out-of-state attorney must withhold five percent (5%) of all amounts paid for legal services performed in Oklahoma in connection with any proceeding described in 5 O.S.Supp.2004, § 1.2, and remit the withheld amount, along with **OTC Form OW-9-D**, to the Oklahoma Tax Commission, P.O. Box 26860, Oklahoma City, OK 73126-0860, on or before the fifteenth (15th) day of the month following the date on which payment for the legal services was made.~~

~~(f) **Reporting procedures.** By February 28 of each year, an Annual Information Return (**OTC Form 501**), must be filed with the Oklahoma Tax Commission summarizing payments made to out-of-state attorneys and entities. In addition, by February 28, **OTC Form 500-C** (Report of Out-of-State Attorney Income Tax Withheld), reporting amounts withheld pursuant to this Section shall be filed with the Commission, showing the name, address, and social security or federal identification number of the out-of-state attorney or entity for whom the income tax was withheld and paid, as well as the name, address, social security number or federal identification number, and telephone number of the payor. A copy of **Form 500-C** (Report of Out-of-State Attorney Income Tax Withheld) must be provided to the out-of-state attorney or entity by February 28 of the succeeding calendar year.~~

~~(g) **Filing requirement for Income Tax.** Any non-resident attorney or entity having Oklahoma source income from compensation for the provision of personal or legal services, or both, is required to file an Oklahoma income tax return and enclose a copy of **Form 500-C** (Report of Out-of-State Attorney Income Tax Withheld).~~

~~(h) **Renewal of registration.** If the out-of-state attorney continues to provide legal services in this state on the anniversary date of the initial registration, the sworn affidavit required by 5 O.S.Supp.2004, § 1.13(B) must be filed with the Oklahoma Bar Association and a copy of the affidavit forwarded to the Oklahoma Tax Commission, P.O. Box 53403, Oklahoma City, OK 73152-3403.~~

[OAR Docket #06-893; filed 5-10-06]

TITLE 730. DEPARTMENT OF TRANSPORTATION
CHAPTER 40. RAILROADS

[OAR Docket #06-923]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 5. Railroad Modernization Program [NEW]
730:40-5-1. through 730:40-5-4. [NEW]
AUTHORITY:
Oklahoma Transportation Commission
200 N. E. 21st Street
Oklahoma City, Oklahoma 73105
68 O.S. 2002 § 2357.101, O.S.L. 2005 § 413
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Failure of the Legislature to disapprove the rules resulted in approval on May 4, 2006.
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Subchapter 5. Railroad Modernization Program [NEW]
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Gubernatorial approval:
November 16, 2005
Register publication:
23 Ok Reg 429
Docket Number:
05-1439
INCORPORATIONS BY REFERENCE:
N/A
ANALYSIS:
The purpose of the is rulemaking action is to verify expenses for railroad reconstruction or replacement by qualified taxpayers and to issue certificates of completion as mandated by Senate Bill 435, O.S.L 2005 § 413. These certificates will provide verification of the qualified expenditures to be considered by the Oklahoma Tax Commission for the purpose of claiming tax credits. The Railroad Modernization program was established to promote betterment of the rail infrastructure to carry the industry standard (larger) cars to use the improved lines and increase the efficiency of freight movement throughout the state.
CONTACT PERSON:
Tim J. Gatz, Assistant Director-Administration (405) 522-6000

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. RAILROAD MODERNIZATION PROGRAM

730:40-5-1. Purpose and authority

(a) **Purpose.** The purpose of the Railroad Modernization Act is to permit verification of eligible taxpayer's qualified railroad reconstruction or replacement expenditures for the purpose of claiming credit for the tax imposed by 68 O.S. Section 2355.

(b) **Authority.** Pursuant to the provisions contained in 68 O.S. Section 2357.103, known and cited as the Railroad Modernization Act, the Department of Transportation is required to provide verification of eligibility of a taxpayer's expenditures for the purpose of claiming the credit. The Act directs that the approval of qualified railroad reconstruction or replacement expenditures be made prior to commencement of a project and to provide a certificate of verification upon completion of a project for such expenditures.

730:40-5-2. Definitions

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

"Class II and Class III railroad" means a railroad that is classified by the United States Surface Transportation Board as a Class II or Class III railroad;

"Eligible taxpayer" means any Class II or Class III railroad; and

"Qualified railroad reconstruction or replacement expenditures" mean expenditures for:

(A) reconstruction or replacement of railroad infrastructure including track roadbed, bridges industrial leads and track-related structures owned or leased by a Class II or Class III railroads as of January 1, 2006 or

(B) new construction of industrial leads, switches, spurs and sidings and extensions of existing sidings by Class II or Class III railroad.

730:40-5-3. Requirements and criteria

The Department shall develop a certification of verification that shall satisfy all requirements of the Tax Commission pertaining to the eligibility of the person claiming the credit.

(1) Cross tie project applications shall be for a ratio equivalent to a minimum of 500 ties per track mile. Qualified expenditures for a cross tie project shall include but not be limited to items such as engineering costs, materials, labor, equipment and freight.

(2) Bridge project applications shall identify improvements that qualify the bridge for a minimum 286,000 pound rating. Applications shall also include a Professional Engineers report which has been stamped to validate the structural integrity of the improvement to be made. Bridge projects can be constructed or rehabilitated in up to three project phases with each phase considered a qualified expenditure for the calendar year in which the phase was completed. Each bridge phase project must be completed in a manner consistent with the Professional Engineers Report. The total bridge project must be completed within five (5) years of the original Department application approval date. The Department has the right to extend the five year requirement for one additional year provided that a written request is made with proof of good cause. Qualified expenditures for a bridge project shall include but not be limited to items such as engineering costs, bridge materials, labor, equipment and freight.

(3) Replacement of a bridge structure with a culvert will require plans certified by a Professional Engineer. The plans are to be filed with the application identifying the specifications that must be met to accommodate a 286,000 pound rating and that proper hydraulic specifications have been maintained.

(4) Rail replacement projects for a main line track shall have a minimum rail weight of 110 pounds per yard. A rail replacement project for a siding or industrial lead shall have a minimum rail weight of 90 pounds per yard. All

replacement rail must be classified as New Rail, Number 1 Rail or Number 2 Rail.

730:40-5-4. Railroad modernization program applications

Detailed information concerning application for this program may be obtained from the Rail Division of the Oklahoma Department of Transportation. Completed application packages shall be submitted to the Rail Division.

[OAR Docket #06-923; filed 5-11-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 1. ORGANIZATION AND METHOD OF OPERATIONS

[OAR Docket #06-1116]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
765:1-1-2.1. [AMENDED]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)(1)
75 O.S. Section 302(A)(1)
75 O.S. Section 307
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The adopted rule updates the manner of giving notice to Commissioners of special meetings of the Commission.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

765:1-1-2.1. Meetings of the Commission

(a) **Monthly meeting.**

(1) The Commission shall hold at least one regular meeting each month of each calendar year at its office in Oklahoma City.

(2) The Commission shall meet at its offices in Oklahoma City, Oklahoma, on the second Tuesday in each month to transact such business as may properly come before it. Notice of any change of any monthly meetings schedule will be in accordance with the Oklahoma Open Meeting Act.

(b) **Special meetings.** Special meetings shall be held upon call of the Chairman by notice given to the members of the Commission at least forty-eight (48) hours prior to the time the meeting is to be held; such notice to be given by telephone, ~~telegraph or~~ letter, fax or email. Special meetings shall be held in compliance with the Oklahoma Open Meeting Act.

(c) **Emergency meetings.** The Commission may hold an emergency meeting for any purpose authorized in the Open Meeting Act, 25 O.S. Section 301 et seq.

(d) **Continued or reconvened meetings.** Any meeting may be continued or reconvened as authorized in the Open Meeting Act, 25 O.S. Section 301 et seq.

(e) **Other meetings.** The Commission may hold other meetings as it deems necessary, at the same location monthly meetings may be held. All meetings shall be held in compliance with the provision of its enabling act, the Open Meeting Act and the Oklahoma Administrative Procedures Act.

(f) **Procedure for meetings.** The Commission may adopt such rules of procedure as the Commission deems appropriate. In absence of a specified procedure, the Chair may determine whether a specific action may be taken and the procedure therefore. The action or procedure shall not conflict with any statutory procedural meeting requirements.

(g) **Effect of vote denying application.** An application which is considered by the Commission for approval or denial and upon which a vote is taken which has the effect of denying the application, need not be reconsidered by the Commission for a period of three (3) months from the date of the original vote.

[OAR Docket #06-1116; filed 5-26-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 2. INFORMAL AND FORMAL PROCEDURES

[OAR Docket #06-1117]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 3. Formal Procedures
765:2-3-5.1. [NEW]
765:2-3-6. [AMENDED]
765:2-3-11. [AMENDED]
Subchapter 5. Arbitration
765:2-5-12. [AMENDED]

AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)(1)
75 O.S. Section 302(A)(1)
75 O.S. Section 307
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SUPERSEDED EMERGENCY ACTIONS:
n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The adopted rule creates a procedure for pre-hearing conference; clarifies the standard for making rulings on evidence; changes means for recording the hearing; and allows the Chairman to sign Final Orders without review of the Commission.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. FORMAL PROCEDURES

765:2-3-5.1. Pre-hearing Conference

As part of the individual proceeding, a pre-hearing conference may be conducted at the initiative of the Movant, to be conducted by the Executive Director or his designee, or in appropriate circumstances by legal counsel for the Commission, for the purpose of identifying the issues and evidence to be considered or introduced at the hearing. Said pre-hearing conference may be used for negotiation of a proposed Consent Order or other disposition of the proceeding.

765:2-3-6. Hearing

(a) **Presiding officer.** The hearing shall be conducted by the Chairman of the Commission or his designate.

(b) **Order of procedure.** Each individual proceeding shall proceed as follows:

(1) Any party shall at all times have the right to counsel. Counsel must be licensed to practice law by the Oklahoma Supreme Court.

(2) All parties shall be afforded the opportunity to present witnesses, evidence, and argument on all issues involved.

(3) A party may cross-examine witnesses.

(4) The Commission or hearing officer may ask questions of all parties.

(c) **Objections and motions.** The ~~Commission~~ Chairman or hearing officer shall rule on the admissibility of evidence and objections to evidence, and shall rule on motions or objections raised in the course of the hearing. In the exercise of this function, the Commission or officer may rely on the advice of counsel present and serving in an advisory capacity. In making a ruling on evidence, the Chairman or hearing officer shall not be required to follow Rules of Evidence, but may use his/her own judgment whether the evidence should be admitted. Any party may object to a ruling which the party considers erroneous, and an exception to such ruling shall be noted of record. Failure to timely object to any alleged error or irregularity shall be deemed as a waiver of such objection.

(d) **Burden and standard of proof.** The burden of proving the allegations contained in its Complaint shall be upon the Movant. The standard of proof required to sustain the imposition of any sanction against a Respondent shall be by clear and convincing evidence.

(e) **Ruling.**

(1) The Commission or Hearing Officer shall prepare Findings of Fact and Conclusions of Law. The Commission or Hearing Officer may request the parties to submit proposed Findings and Conclusions before making a final ruling. Any party may file proposed Findings and Conclusions. Disposition of any individual proceeding may be by stipulation, agreed settlement, consent order, default or majority vote.

(2) The Commission by majority vote, may deny, suspend, or revoke a license or impose a fine, if authorized, for any of the reasons provided in 47 O.S. Section 581 et seq. The Commission, by majority vote, may refuse, cancel, or revoke a license or impose a fine, if authorized, for any of the reasons provided in 47 O.S. Section 591.1 et seq.

765:2-3-11. Record of hearing

(a) **Contents of record.** The record in every individual proceeding shall include the following:

(1) all pleadings, motions, and intermediate rulings,

(2) evidence received and considered,

(3) a statement of matters officially noticed,

(4) questions and offers of proof, objections and rulings thereon,

(5) proposed findings and exceptions,

(6) any decision, opinion, or report by the person(s) presiding at the hearing, and

(7) all staff memoranda or data submitted to the hearing officer or the Commission in connection with their consideration of the case.

(b) **Recording.**

(1) A record of the hearing, by means of tape recording or ~~shorthand notes~~ court reporter's transcript, will be made of all hearings conducted by the Commission or a hearing officer unless the presiding officer designates otherwise.

(2) The record of the hearing and the file containing the pleadings will be maintained in a place designated by the Executive Director. The tape recordings of the proceedings shall be maintained for a period of one (1) year.

(c) **Transcript.** A transcript of the proceeding shall not be transcribed except upon written application by any party to the action. The party requesting transcription will bear the cost and will pay a fee according to a schedule established by the Commission. An initial deposit set by the Commission also must be paid by said party.

(d) **Final order.** All final orders in individual proceedings shall be in writing. The final order shall include Findings of Fact and Conclusions of Law, separately stated. A copy of the final order will be mailed forthwith to each party and to his/her attorney of record. A Final Order may be signed by the Chairman or his designee without approval or review of the Commission, so long as said Order fairly represents the action taken. No other signatures shall be required.

SUBCHAPTER 5. ARBITRATION

765:2-5-12. Record of hearing

(a) **Contents of record.** The record in every proceeding shall include the following:

(1) all pleadings, motions, and intermediate rulings,

(2) evidence received and considered,

(3) a statement of matters officially noticed,

(4) questions and offers of proof, objections and rulings thereon,

(5) proposed findings and exceptions, and

(6) any report by the presiding officer.

(b) **Recording.**

(1) A record of the hearing, by means of tape recording or ~~shorthand notes~~ court reporter's transcript, will be made of all hearings conducted by the Commission or a hearing officer unless the presiding officer designates otherwise.

(2) The record of the hearing and the file containing the pleadings will be maintained in a place designated by the Executive Director. The tape recordings of the proceedings shall be maintained for a period of one (1) year.

(c) **Transcript.** A transcript of the proceeding shall not be transcribed except upon written application by any party to the action. The party requesting transcription will bear the cost and will pay a fee according to a schedule established by the Commission. An initial deposit set by the Commission also must be paid by said party.

(d) **Final decision.** All final decisions shall be in writing. A copy of the final decision will be mailed forthwith to each party and to his/her attorney of record.

[OAR Docket #06-1117; filed 5-26-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 3. PROMULGATION, AMENDMENT, AND REPEAL OF RULES

[OAR Docket #06-1118]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
765:3-1-6 [AMENDED]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)(1)
75 O.S. Section 302(A)(1)
75 O.S. Section 307
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n/a
INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The adopted rule change expands the reasons for adopting emergency rules to include any reason allowed by Oklahoma law.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

765:3-1-6. Emergency rules

The Commission may adopt an emergency rule if it determines that there is an imminent peril to the public health, safety, or welfare or for any reason authorized by Oklahoma law for the promulgation and adoption of emergency rules. Action on such a rule shall be done in accordance with the requirements of the Administrative Procedures Act.

[OAR Docket #06-1118; filed 5-26-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 10. USED MOTOR VEHICLE DEALERS

[OAR Docket #06-1119]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:10-1-3 [AMENDED]
Subchapter 3. Operation
765:10-3-1 [AMENDED]
765:10-3-3 [AMENDED]
765:10-3-4 [NEW]
765:10-3-5 [NEW]
Subchapter 5. Assessment of Fine or Denial, Suspension, or Revocation of License
765:10-5-1 [AMENDED]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)(1)
75 O.S. Section 302(A)(1)
75 O.S. Section 307
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The adopted rule changes 1) clarify that each dealer is required to keep a facility separate from other businesses; 2) require documentation of all vehicle transactions and the specific terms of the transaction; 3) clarifies what records and documentation are required to be kept; and 4) include in the rules authorization granted by statute to assess fines.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:10-1-3. Place of business

(a) An applicant must have an established place of business. An established place of business means a location which includes at a minimum:

(1) a display area for vehicle(s) that are for retail easily accessible, and readily distinguishable from vehicles parked on the premises for purposes other than for sale of the vehicle by the licensed dealer,

(2) sufficient parking for the public,

(3) an office for conducting business where the books, records and files are kept,

(4) an office which is a building or is a separate room within a building on the premises devoted exclusively to the operation of the used motor vehicle business. that is considered a permanent structure with access to a restroom for the public. Such place of business shall not include an occupied residence and shall not include the use of vacant lots, tents, temporary stands, or other temporary office facilities.

(5) place of business shall meet all zoning, occupancy, and other requirements of the appropriate local government, and shall be regularly occupied by a person, firm, or corporation engaged in the business of selling used motor vehicles,

(6) a sign, not less than thirty-two (32) square feet in size, unless restricted to a smaller size by the applicable zoning regulations of the governmental body in which the business is located. The sign shall not be a banner or portable sign, but must be permanently affixed to the property and shall have permanently affixed legible letters of a size not smaller than six (6) inches in height. The sign and letters thereof shall be visible from the roadway nearest to the entrance of the place of business, and

(7) a business telephone, listed with directory assistance and usable at the place of business. Said telephone may include a cellular or digital telephone listed and usable at the place of business,

(b) An applicant may apply for a used motor vehicle dealer's license at the same address or location as another applicant or licensee. In addition to the requirements listed in subparagraph (a) above, such applicant shall be required to show that the location is of sufficient size, space and configuration for the operation of the dealership separate and apart from any other dealership at the same address or physical location without confusion by those with whom the applicant or licensee will be dealing as to with which licensee they are dealing.

(c) In the event an applicant is granted a license at the same address or location as another licensee, each licensee shall keep their vehicles segregated from those of the other licensee.

(d) It shall be solely within the discretion of the Commission whether it is appropriate that more than one applicant shall be licensed at the same location or address. If it appears after licensing that the licensees ~~are~~ do not or cannot continue to

fulfill the terms and conditions of licensing, the license of the offending licensee may be suspended or revoked.

SUBCHAPTER 3. OPERATION

765:10-3-1. Forms required

(a) **Retail Sales Forms.** The following forms shall be required in the sale of a used motor vehicle by a used motor vehicle dealer to anyone other than a licensed dealer:

(1) Sales contract or bill of sale ~~or buyer's order~~,

(2) Odometer statement,

(3) Federal Trade Commission Buyer's Guide conforming to FTC and state standards,

(4) Written notice of thirty (30) day title-transfer requirement and receipt for delivery of certificate of title to buyer,

(5) Used motor vehicle dealer's temporary tag,

(6) Condition of sale:

(A) warranty, or

(B) vehicle service contract, or

(C) warranty disclaimer,

(7) Finance or security agreement, if applicable, and

(8) Consignment agreement, if applicable,

(9) Spot delivery form, if applicable,

(10) 'We Owe' form, if applicable,

(~~10~~11) Any other form which affects the rights of either party.

(b) **Dealer to dealer forms.** The following forms shall be required in dealer to dealer transactions:

(1) Bill of sale, and

(2) Odometer statement, if required.

(~~b~~c) **Approval.** All forms must be approved by the Commission. The content and forms to be used shall be filed ~~ten (10)~~ thirty (30) days prior to use, and if not rejected in ~~ten (10)~~ thirty (30) days from the filing date, the forms will be conditionally approved.

(~~c~~d) **Standards.** The forms required shall contain substantially the following information:

(1) **Sales contract or bill of sale~~, or buyer's order~~.**

(A) The sales contract or bill of sale~~, or buyer's order~~ shall state the names of the parties, the make, model, tag number and vehicle identification number (VIN) of the vehicle subject to the transaction, a statement of the selling amount, a description of the vehicle traded in, if any, and the consideration given therefore, and the statement referring to the FTC Buyer's Guide ~~set forth in the following paragraph~~ as required by federal law or rule, and proper signatures of the parties.

(B) Said form shall also contain or have attached a statement of any terms that create any contingencies in the completion of the contract, including contingencies relating to financing, whether by the dealer or a third party, and any limitations to which the contingencies may be subject.

(C) Said form shall also state, in clearly understandable terms, the type of title the purchaser shall receive, whether it be an "original" green title; an insurance loss dated title; a title with a theft or flood damage notation; or a rebuilt, salvage or junk title, or any other disclosures or discrepancies noted on the face of the title, including special notations regarding mileage or odometer readings, but shall not include a "repossessed" or "repo" title, together with some form of written acknowledgment by the purchaser that the purchaser is aware of the type of title to be received. Failure to make said disclosure shall create a presumption that the type of title to be received shall be an "original" green title without discrepancies of any sort.

(D) Said form shall not contain statements such as "trade in value does not reflect actual cash value of trade in" or any language that suggests the amounts stated are not the true value agreed upon by the parties.

(2) **Odometer statement.** The odometer statement must conform to the requirements of federal and state law.

(3) **Federal Trade Commission Buyer's Guide.**

(A) From and after May 9, 1985, in all sales to consumers, as defined in Title 16 Code of Federal Regulations Section 455.1(4), it shall be required that dealers display and complete the "Buyer's Guide" form required by the Federal Trade Commission. Display and completion of the "Buyer's Guide" as required by Federal Trade Commission Used Motor Vehicle Trade Regulation Rule shall be deemed compliance with this rule.

(B) The "Buyer's Guide" required herein shall not be used in lieu of warranty disclaimer forms to disclaim warranties, actual or implied. In order to disclaim any warranties, a separate warranty disclaimer form must be used.

(C) From and after May 9, 1985, conditions of sale forms must include the following language, conspicuously written on that form: "The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale." Condition of sale contracts which do not contain this language shall not be approved by this Commission. Nothing in this rule shall be construed to make any additional informational or substantive requirements as to warranties, implied warranties or service contracts beyond that presently required by the Used Motor Vehicle Trade Regulation Rules or state law.

(4) **Title, tax stamp and tax transfer notice requirement.** It shall be the duty of every person licensed to sell new or used motor vehicles to advise each purchaser in writing about his title requirements and payment of any taxes due. It shall be the duty of the selling dealer to affix the applicable used motor vehicle dealer's tax stamp in the appropriate place on the assignment or re-assignment area of the certificate of title. Dealers failing to comply with provisions of this section shall be responsible for all taxes due on such sales or on such vehicles.

(e) **Used motor vehicle dealer's temporary tags.** Misuse of the used motor vehicle dealer's temporary tag may be grounds for the assessment of a fine or, suspension or revocation of the used motor vehicle dealer's license.

765:10-3-3. Records

(a) Each dealer shall keep for a period of three (3) years from the date of sale (or as required by any other federal, state, or local regulations), a record of the purchase and sale of each motor vehicle he buys or sells, which shall show the name of the seller or buyer as the case may be, and a complete description of the vehicle purchased or sold, and which shall include a copy of the front and back of the completely assigned certificate of title to each vehicle sold ~~to a retail purchaser~~, and such other information as the Commission may prescribe. A public auction which allows non-dealers to sell or purchase vehicles at its auction shall also be required to keep a copy of the front and back of the certificate of title to each vehicle sold or purchased by a non-dealer. The records and title of vehicles shall be available upon request to authorized agents or employees of the Commission or any law enforcement officer of the State of Oklahoma. If it is determined that a licensee has knowingly provided false or misleading information when requested to provide records, the licensee may be subjected to any appropriate sanction authorized by rule or statute.

(b) Records shall include but not be limited to bills of purchase or sale, odometer statements, invoices of repair or expense, certificates of title, and accounting records for the operation of the business, including, but not limited to, checking accounts, checks, drafts, and/or financing agreements for inventory.

765:10-3-4. Disclosures

Any disclosures material to the final terms of the contract shall be disclosed prior to or during negotiation of the contract.

765:10-3-5. Prohibited Acts

A used motor vehicle dealer shall not solicit or offer compensation for referrals of prospective buyers from used motor vehicle salespersons employed by another used motor vehicle dealer.

SUBCHAPTER 5. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

765:10-5-1. Grounds

(a) The Commission may deny an application for a license, or revoke or suspend a license after it has been granted for any of the reasons listed in 47 O.S. Sections 584 (1) through ~~(9)~~(7); for violation of any statute or regulation relating to the purchase, sale, display for sale, or transfer of a used motor vehicle; or if it is determined that the license is being or has been issued for the benefit of a person who would not or could not qualify for the license in his or her own right.

(b) The Commission may in addition to any other sanction or penalty assessed, impose a fine as authorized by law.

[OAR Docket #06-1119; filed 5-26-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 11. USED MOTOR VEHICLE REBUILDERS

[OAR Docket #06-1120]

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PERMANENT final adoption
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Subchapter 3. Authority of a Rebuilder
765:11-3-1 [AMENDED]
Subchapter 5. Assessment of Fine or Denial, Suspension, or Revocation of License
765:11-5-1 [AMENDED]
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Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)(1)
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ANALYSIS:
The adopted rule change clarifies the authorization granted to a holder of a used motor vehicle rebuilder certificate and explains and defines the difference between a used motor vehicle rebuilder and an automotive dismantler.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. AUTHORITY

765:11-3-1. Authority of a rebuilder

(a) A rebuilder who has been issued a rebuilder's certificate and Class A BID card pursuant to 47 O.S. Section 591.5, shall be authorized to purchase repairable motor vehicles at salvage pools or salvage disposal sales for the purpose of rebuilding those vehicles.

(b) The holder of a rebuilder's certificate shall not have the authority to act as an automotive dismantler.

(c) The holder of a rebuilder's certificate shall not have the authority to purchase vehicles at salvage pools or salvage disposal sales for the purpose of using the parts to rebuild another vehicle or to purchase vehicles with "junked" branded titles.

(d) The holder of a rebuilder's certificate shall not have the authority to purchase vehicles for another to rebuild or to sell repairable vehicles in an unrepaired condition.

SUBCHAPTER 5. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

765:11-5-1. Grounds ~~for denial, suspension, or revocation of rebuilder's certificate~~

(a) A rebuilder's certificate may be denied, suspended, or revoked for the following reasons:

(1) Any of the grounds enumerated in 47 O.S. Section 584 for which a used motor vehicle dealer's license may be denied, suspended, or revoked.

(2) Committing any of the following acts may be deemed grounds for denial, suspension, or revocation of a rebuilder's certificate or assessment of fines pursuant to 47 O.S. Section 584(6)(d) and/or 47 O.S. Section 584(6)(e):

(A) Failure of the rebuilder to disclose in writing to the purchaser of the vehicle that the vehicle has been rebuilt;

(B) Failure of the rebuilder to disclose in writing to the purchaser of the vehicle that the vehicle has a rebuilt certificate of title;

(C) Selling a rebuilt vehicle on a salvage certificate of title;

(D) Failing to obtain a rebuilt vehicle inspection and/or obtain a rebuilt certificate of title prior to the sale of the vehicle.

(E) Selling a wrecked vehicle purchased from a salvage pool or salvage disposal sale prior to it being rebuilt.

(F) Using a wrecked vehicle purchased at a salvage pool or salvage disposal sale for the purpose of using the parts to rebuild another vehicle.

(b) The Commission may in addition to any other sanction or penalty assessed, impose a fine as authorized by law.

[OAR Docket #06-1120; filed 5-26-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 15. USED MOTOR VEHICLE ~~SALESMEN~~ SALESPERSONS

[OAR Docket #06-1121]

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RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:15-1-1 [AMENDED]
765:15-1-2 [AMENDED]
765:15-1-3 [AMENDED]
765:15-1-4 [AMENDED]
765:15-1-5 [AMENDED]
765:15-1-7 [AMENDED]
Subchapter 3. Authority of ~~Salesmen~~Salespersons
765:15-3-1 [AMENDED]
Subchapter 5. Assessment of Fine or Denial, Suspension, or Revocation of License
765:15-5-1 [AMENDED]

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ANALYSIS:
The adopted rule changes terminology of person subject to this chapter from "salesman" to "salesperson" and further defines individuals who need to be licensed.

CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:15-1-1. Purpose

The rules of this Chapter have been adopted for the purpose of complying with the provisions of 75 O.S. Section 250 et seq. and 47 O.S. Section 582 (E). This Chapter will provide a description of the qualifications for obtaining a used motor vehicle ~~salesman's~~ salesperson's license, authority of a ~~salesman~~ salesperson, and the grounds and procedure for assessment of a fine or denial, suspension, or revocation of a used motor vehicle ~~salesman's~~ salesperson's license.

765:15-1-2. Fees

The fees required for an application or renewal of used motor vehicle ~~salesman's~~ salesperson's license are recited in 47 O.S. Section 583. A fee will be returned to the applicant in the event the license is denied.

765:15-1-3. Applicant

(a) **Activities requiring license.** A used motor vehicle ~~salesman~~ salesperson is anyone who:

(1) receives gain or compensation of any kind, directly or indirectly, regularly or occasionally for, or negotiates for, sale or trade of a specified used motor vehicle for a specified used motor vehicle dealer, or

(2) operates as a broker only for a specified used motor vehicle dealer, or

(3) receives compensation for referral of a prospective buyer to his employer or acts on behalf of the dealer in the purchase or sale of a used motor vehicle, or

(4) is authorized to transfer and/or sign titles for the dealership, or

(5) displays or offers used motor vehicles for sale for the dealership at a licensed location,

(6) acts in the capacity of sales manager or finance and insurance manager or acts in any capacity as part of the sales process,

(7) does not otherwise come under the definition of a wholesale used motor vehicle dealer and/or is not required to obtain a license as a wholesale used motor vehicle dealer, but is authorized by a person licensed by the Oklahoma Motor Vehicle Commission to sell new or unused motor vehicles,(franchise dealer) to purchase and sell used motor vehicles without direct supervision by the "franchise dealer," whether at auction or otherwise, to-wit: a "wholesaler" or individual who pays the "franchise dealer" a draft or check fee for vehicles purchased using the "franchise dealer's" used motor vehicle dealer's license; or who is required to compensate the "franchise dealer" for any loss arising from the sale of a vehicle; or who in any manner operates independently of the ordinary business of the "franchise dealer."

(b) **Information required.** An applicant shall provide sufficient information on the application or otherwise to enable the Commission to determine whether the applicant should be granted a license. The information shall include:

(1) information relating to the applicant's business integrity, the applicant's experience in the same or similar businesses, and his business history,

(2) whether the applicant will devote full or part time to the business, and

(3) any other pertinent information consistent with the safeguarding of the public interest and welfare.

(c) **Application required.** Applications for license shall be verified by the oath or affirmation of the applicant and shall be on forms prescribed by the Commission and furnished to such applicants. The applications shall contain such information as the Commission deems necessary to enable it to fully determine the qualifications and eligibility of the applicant for the license applied for.

(d) **Activity not requiring a license.** A dealer, by written instrument, may authorize another licensed individual or dealer to purchase vehicles for the dealer. Said authorization shall not authorize the individual to conduct any other business for the dealer or represent the dealer in any other manner.

(e) **Activity not authorized.** A salesperson's license shall not authorize the person to refer a prospective customer or consumer to another used motor vehicle dealer and obtain compensation therefor without an employment relationship with the other used motor vehicle dealer.

765:15-1-4. Bond

Each applicant for a used motor vehicle ~~salesman's~~ salesperson's license shall procure and file with the Commission a good and sufficient bond in the amount of One Thousand Dollars ($1,000). Such bond shall be filed on a form approved by the State Attorney General and furnished by the Commission. The conditions of the bond shall be that the applicant perform his duties as a used motor vehicle ~~salesman~~ salesperson without fraud, fraudulent representations, and without violating any of the provisions of 47 O.S. Section 581 et seq.

765:15-1-5. Issuance of license

(a) **Prerequisite.** A license for a used motor vehicle ~~salesman~~ salesperson will not be issued, renewed, or endorsed until the employing dealer is licensed and has certified that the applicant for said license is in his employ. Dealers' payrolls and other evidence will be checked to ascertain that all ~~salesmen~~ salespersons for such dealers are licensed. It is not intended that the dealer be required to pay for licenses for its ~~salesmen~~ salespersons. However, the dealer may do so on a reimbursable basis, or any other plan satisfactory to its dealership organization. All ~~salesmen's~~ salespersons licenses will be sent to the dealer for distribution to the respective applicants, and the dealer will determine that all its personnel required to obtain licenses have done so.

(b) **Temporary license.**

(1) A temporary ~~salesman's~~ salesperson's license, ~~salesman's~~ salesperson's renewal, or reissue of a ~~salesman's~~ salesperson's license shall be deemed to have been issued when the appropriate application, bond, and fee

have been properly addressed and mailed to the Commission, except as follows:

(A) in the case of incomplete application,

(B) in the case of improperly executed bond,

(C) in the case of proper fee not being submitted,

(D) in the case of applicant's having been previously denied a license with this Commission, in which case a hearing may be held, or

(E) in the case of applicant's having been convicted of a crime involving moral turpitude (act or behavior that gravely violates accepted moral standards of community), committed any unlawful act which resulted in revocation of similar license in another state, or committed a fraudulent act in selling or purchasing motor vehicles in such a manner as to cause injury to the public, in which case a hearing may be held.

(2) All temporary ~~salesman~~ salesperson license applications shall be submitted for approval to issue permanent license at the first monthly Commission meeting following receipt of application, except in the cases stated in (D) and (E) of paragraph of (1) of this subsection

(c) **Permanent license.** A permanent ~~salesman's~~ salesperson's license shall be issued after approval of the applicant by the Commission. A ~~salesman's~~ salesperson's license shall consist of an identification card bearing the name, signature of the ~~salesman~~ salesperson, social security number, name of employer, address, signature of the Executive Director, ~~salesman's license number, prefixed with UD, followed by the dealer's license number~~ and the dealer's license number prefixed with UD (UD-0000). The card shall be carried upon his person at all times when acting as a used motor vehicle ~~salesman~~ salesperson at licensee location.

(d) **Reciprocity.** A ~~salesman's~~ salesperson's license issued by the Oklahoma Motor Vehicle Commission shall be valid as a used motor vehicle ~~salesman's~~ salesperson's license for the dealer's franchised location.

765:15-1-7. Changes

(a) **Employer.** If the ~~salesman~~ salesperson changes employer, the licensee shall immediately mail the license to the Commission for its endorsement of the change of employer. There shall be no charge for such endorsement. The licensee shall keep his license on his person while engaged in his business and shall display it upon request; however, there shall be no penalty for not having the license upon his person when he has submitted it to the Commission for its endorsement of a change of employer.

(b) **Notice.** The dealer will notify the Commission in writing when a ~~salesman's~~ salesperson's employment is terminated. The dealer may be liable for actions of the ~~salesman~~ salesperson until proper notice is filed with the Commission.

(c) **~~Salesman's~~ Salesperson's card.** Each ~~salesman~~ salesperson shall surrender his identification card to the Commission for endorsement of change of employer, before again engaging in the business as a ~~salesman~~ salesperson for another used motor vehicle dealer or as a used motor vehicle dealer.

SUBCHAPTER 3. AUTHORITY OF ~~SALESMEN~~ SALESPERSONS

765:15-3-1. Authority

(a) **~~Salesman~~ Salesperson only.** A used motor vehicle ~~salesman's~~ salesperson's license shall permit the licensee to engage in the activities of a used motor vehicle ~~salesman~~ salesperson. A ~~salesman's~~ salesperson's license does not entitle the licensee to perform as a dealer as defined in 47 O.S. Section 581 (4). A used motor vehicle ~~salesman's~~ salesperson's license does not entitle a person to separately own vehicles for sale or any interest in the vehicles or dealer business without first qualifying as a partner, corporate member, or part owner of the dealership and meeting the qualifications of a dealer as prescribed in 47 O.S. Sections 581-583.

(b) **One card only.** A ~~salesman~~ salesperson may not hold more than one used motor vehicle ~~salesman's~~ salesperson's license at any one time or be employed by or sell for any dealer other than the dealer and at the address designated on the ~~salesman's~~ salesperson's license, with the exception that the licensed dealer has more than one location. Then the licensed dealer and licensed ~~salesman~~ salesperson may sell on each location properly licensed as additional locations.

(c) **Restrictions.** A ~~salesman's~~ salesperson's license shall not be issued for an individual who is not actively engaged in the activities of a used motor vehicle ~~salesman~~ salesperson, nor shall it be issued for the purpose of allowing an individual to operate a vehicle with a used motor vehicle dealer's plate for any use not benefitting the dealer's business.

SUBCHAPTER 5. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

765:15-5-1. Grounds

(a) The Commission may deny an application for license, or suspend or revoke a license after it has been granted for any of the reasons listed in 47 O.S. Sections 584 (1) through (9); for violation of any statute or regulation relating to the purchase, sale, display for sale, or transfer of a used motor vehicle; or if it is determined that the license is being or has been issued for the benefit of a person who would not or could not qualify for the license in his or her own right.

(b) The Commission may in addition to any other sanction or penalty assessed, impose a fine as authorized by law.

[OAR Docket #06-1121; filed 5-26-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 16. ADVERTISING

[OAR Docket #06-1122]

RULEMAKING ACTION:

PERMANENT final adoption

RULES:
Subchapter 1. General Provisions
765:16-1-2 [AMENDED]
Subchapter 3. Specific Advertising Regulations
765:16-3-7 [AMENDED]
765:16-3-11 [AMENDED]
765:16-3-12 [NEW]
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ANALYSIS:
The adopted rules bring the specifications in line with current advertising practices.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. GENERAL PROVISIONS

765:16-1-2. Definitions

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

"Advertisement" means an oral, written, graphic, or pictorial statement made in the course of soliciting business, including, without limitation, a statement or representation made in a newspaper, magazine, or other publication, or contained in a notice, sign, poster, display, circular, pamphlet, or letter, or on radio or on television or on the Internet.

"Bait advertisement" means an alluring but insincere offer to sell a product but which has as its primary purpose of obtaining leads of persons interested in buying the advertised product in order to sell some other product at a higher price or on a basis more advantageous to the advertiser.

"Clear and conspicuous" means that the statement, representation, or disclosure is of such size, color, contrast, and audibility and is presented so as to be readily noticed and understood. All language and terms, including abbreviations, shall be used in accordance with their common or ordinary usage and meaning. This standard shall be met by the following:

(1) In print advertisement:

(A) The type size of ~~"AGATE (5 $\frac{1}{2}$ points) CAPS"~~ 5 $\frac{1}{2}$ caps or larger shall be used in all disclosures.

(B) ~~The disclosure statement shall be disclosed adjacent to the price or in a box with a heading such as "Restrictions" or "Disclosures". All reference symbol marks, such as asterisks, must be type size "AGATE" or larger.~~ Disclosures shall be located adjacent to the price or in an area clearly marked with reference symbols. All reference symbol marks, such as asterisks, must be type size 5 $\frac{1}{2}$ caps or larger.

~~(C) The disclosure size should be at least 20 scan lines and each disclosure should appear on the screen at least 10 seconds for a television advertisement.~~

(2) In ~~a broadcast commercial~~ an audio advertisement:

(A) The ~~statement is made orally and is~~ disclosure shall be clear and understandable in pace and volume; ~~or~~ and,

(B) ~~The statement is in visual form so that the average viewer can easily read and understand it.~~ The disclosure shall be placed at the end of the advertisement.

(3) In a television advertisement:

(A) The disclosure shall be in visual form so that the average viewer may easily read and understand it.

(B) The disclosure size shall be at least twenty (20) scan lines and each disclosure shall appear continuously on the screen for at least ten (10) seconds.

"Demonstrator" means those vehicles that are of the current or previous model year which have not been sold, titled, or registered to any type of purchaser and are used by dealership personnel for demonstration purposes. Service vehicles, courtesy cars, daily rentals, loners, driver education and factory executive cars shall not be described as "demonstrator" vehicles. Demonstrators may be advertised for sale, as such, only by a franchised dealer of the same line-make of vehicle.

"Disclosure" means required information that is clear, conspicuous, and accurate.

"Factory Executive/Official Vehicle" means a new motor vehicle with an original Manufacturer's Statement of Origin or used motor vehicle with a Certificate of Title, that has been used exclusively by an executive or official of the dealer's franchising manufacturer, distributor, or their subsidiaries. The advertiser shall state clearly whether the vehicle is a new or used vehicle.

"Licensee" means any person required to obtain a license from the Oklahoma Used Motor Vehicle and Parts Commission.

"Program vehicle" means a vehicle that is purchased at a manufacturer's closed auction or sold by or directly from

the manufacturer or distributor which is a current or previous year model, that has been previously tagged and/or titled, and returned to the manufacturer for disposal.

"Rebate or cash back" means a sum of money refunded to a purchaser or for the benefit of the purchaser. The purchaser may choose to reduce the amount of the purchase price by the sum of money or the purchaser may opt for the money to be returned to the purchaser for his or her benefit.

SUBCHAPTER 3. SPECIFIC ADVERTISING REGULATIONS

765:16-3-7. Identification

(a) when the price, payment or savings claim of a vehicle is advertised, the following must be disclosed:

(1) model year;

(2) make;

(3) trade, brand or style name; and

(4) if other than a new vehicle, the vehicle must be identified as a used, demonstrator, ~~or~~ factory executive/official vehicle, or a program vehicle.

(b) An illustration of a motor vehicle used in an advertisement must be that of the motor vehicle advertised. If an illustration of the advertised vehicle is not available then the dealer must clearly and conspicuously disclose the difference between the illustration and the vehicle being advertised.

765:16-3-11. Prohibited statements

The following statements are presumptively false and misleading, and the burden of proving otherwise shall be on the advertiser/licensee:

(1) Statements such as "write your own deal", "name your own price, "name your own monthly payment", or statements with similar meaning.

(2) Statements such as "everybody financed", "no credit rejected", ~~"we finance anyone",~~ "guaranteed approval", you are "pre-approved", and other similar statements representing or implying that no prospective credit purchaser will be rejected because of his inability to qualify for credit.

(3) Statements representing that no other dealer grants allowances for trade-ins, however stated, unless such is the case.

(4) Statements representing that because of its large sales volume a dealer is able to purchase vehicles for less than another dealer, unless such is the case.

(5) No merchandise or enticement may be described as "free" if the vehicle can be purchased for a lesser price without the merchandise or enticement, or if the price of the vehicle has been increased to cover the cost or any part of the cost of the merchandise or enticement. The advertisement shall clearly and conspicuously disclose the conditions under which the "free" offer may be obtained.

(6) The term "dealer's cost", or other reference to the cost of the vehicle to the dealer shall not be used.

(7) No "~~guaranteed trade-in amount~~" trade-in amount or range of amounts shall be advertised.

(8) A used vehicle shall not be advertised in any manner that creates the impression it is new.

(9) The use of the terms "liquidation", "going out of business", or statements with similar meaning, are prohibited unless a dealer is actually going out of business and ceasing its operations at the licensed location. If a dealer is going out of business, these terms may only be advertised during the period between the execution of a buy-sell agreement with the proposed buyer and the actual effective date of the sale.

(10) An offer of a buy down rate is prohibited without the appropriate disclaimer: "This is a buy down rate. The amount of the buy down may affect the price of the vehicle."

(11) Terminology such as "we pay off your trade no matter how much you owe" or statements with similar meaning shall not be used, unless accompanied by a disclaimer indicating that pay off is dependent upon approved credit.

765:16-3-12. Dealership name

All advertisements must conspicuously display the licensed name of the used motor vehicle dealership.

[OAR Docket #06-1122; filed 5-26-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 20. WHOLESALE USED MOTOR VEHICLE DEALERS

[OAR Docket #06-1123]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:20-1-1 [AMENDED]
765:20-1-2 [AMENDED]
765:20-1-4 [AMENDED]
765:20-1-6 [AMENDED]
Subchapter 3. Operation
765:20-3-2 [AMENDED]
Subchapter 5. Assessment of Fine or Denial, Suspension, or Revocation of License [NEW]
765:20-5-1 [NEW]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)(1)
75 O.S. Section 302(A)(1)
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ANALYSIS:
The adopted rule is being amended to include that the statutes now allow the Commission to assess fines, cell phones may qualify as business listed phones, and a wholesaler not licensed by the Oklahoma Motor Vehicle Commission is required to have a wholesale dealer's license with this Commission.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:20-1-1. Purpose

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. and 47 O.S. Section 582 (E). This Chapter will provide a description of the qualifications for obtaining a wholesale used motor vehicle dealer's license, operation under said license, and grounds for assessment of fines, denial, suspension, or revocation of a wholesale used motor vehicle dealer's license.

765:20-1-2. Additional definitions

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

"Approved location" means the physical property location of the wholesale used motor vehicle dealer's office which meets local zoning requirements and other requirements for licensing as a wholesale used motor vehicle dealer's place of business.

"Office" means a permanent room or building separate and apart from any other business, devoted exclusively to the operation of the wholesale used motor vehicle dealer's business.

"Principal business" means the business of wholesaling used motor vehicles with the intent to make a profit, which shall be a primary source of income or support for the wholesale used motor vehicle dealer and shall not include a business which has the primary purpose to avoid payment of excise tax, license fees or other state fees for vehicles used primarily for personal use.

"Records" means bills of purchase or sale, odometer statements, invoices of repair or expense, certificates of title, and accounting records for the operation of the business, including, but not limited to, checking accounts, checks, drafts, and/or financing agreements for inventory.

"Sign" means a means of identifying the location of the wholesale used motor vehicle dealer's business.

"Telephone" means any telephonic device for communication which can be business listed in a telephone directory for the telephone service area in which the wholesale used motor vehicle dealer's business is located and may include ~~"mobile~~ cell phones"~~, "beepers", or "local remote call forwarding"~~.

"Wholesale used motor vehicle dealer" means any person who, for a commission or with intent to make a profit or gain of money or other thing of value, sells, brokers, exchanges, rents with option to purchase, or offers or attempts to negotiate a sale or exchange of interest in used motor vehicles exclusively to used motor vehicle dealers, or who is engaged in the business of selling used motor vehicles exclusively to used motor vehicle dealers, whether or not such motor vehicles are owned by such person, but shall not include any person who is not engaged in such activity as a principal business.

"Zoning or other municipal requirements" means authorization in writing from the local governmental body which has authority to regulate zoning, to conduct the business of wholesale auto sales at the location stated as the wholesale used motor vehicle dealer's place of business on his application for license.

765:20-1-4. Applicant

(a) **Duty to license.** Any person who conducts a wholesale used motor vehicle business, who is not a bona fide employee of a used motor vehicle dealer or person licensed by the Oklahoma Motor Vehicle Commission to sell new or unused motor vehicles, and whose association with a used motor vehicle dealer is primarily for purposes of floor planning, financing or drafting on the used motor vehicle dealer shall be required to obtain a wholesale used motor vehicle dealer's license.

(b) **Principal business.** A wholesale used motor vehicle dealer must be engaged in the wholesaling of used motor vehicles as a principal business in order to obtain and maintain his license.

(c) **Resident.** A wholesale used motor vehicle dealer shall be a bona fide resident of the State of Oklahoma as evidenced by an Oklahoma Driver's License or Oklahoma Identification card issued by the Oklahoma Department of Public Safety.

(d) **Application required.** Applications for license shall be verified by oath or affirmation of the applicant and shall be on forms prescribed by the Commission and furnished to such applicants. The applications shall contain information as the Commission deems necessary to enable it to fully determine the qualifications and eligibility of the applicant for license.

765:20-1-6. Issuance of license

(a) **Name and number.** A wholesale used motor vehicle dealer's license will be issued in the legal name of the individual as stated on the application for license. The license number shall be prefixed with a "W", followed by a five digit number and current year of license (W-10001-~~90~~ 00).

(b) **One license.** A wholesale used motor vehicle dealer's license shall entitle only one person to act as a wholesale used motor vehicle dealer, regardless of the form of ownership of the business. Only one wallet license card shall be issued per license.

SUBCHAPTER 3. OPERATION

765:20-3-2. Records

Every wholesale used motor vehicle dealer shall keep for a period of three (3) years from date of sale (or as required by any other federal, state, or local regulation) a complete record of the purchase and sale of each motor vehicle bought or sold, which shall include the name and address of the seller or buyer, a complete description of the vehicle, a copy of the front and back of the completely assigned certificate of title for each vehicle sold, and a properly executed odometer statement. The records and titles of vehicles shall be available upon request to authorized agents or employees of the Commission or any law enforcement officer of the State of Oklahoma. If it is determined that a licensee has knowingly provided false or misleading information when requested to provide records, the licensee may be subject to any appropriate sanction authorized by rule or statute.

SUBCHAPTER 5. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

765:20-5-1. Grounds

(a) The Commission may deny an application for a license, or revoke or suspend a license after it has been granted for any of the reasons listed in 47 O.S. Sections 584 (1) through (7); for violation of any statute or regulation relating to the purchase, sale, display for sale, or transfer of a used motor vehicle; or if it is determined that the license is being or has been issued for the benefit of a person who would not or could not qualify for the license in his or her own right.

(b) The Commission may in addition to any other sanction or penalty assessed, impose a fine as authorized by law.

(c) The Commission shall revoke the license of a wholesale used motor vehicle dealer who sells a used motor vehicle to someone other than a license used motor vehicle dealer.

[OAR Docket #06-1123; filed 5-26-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 25. AUTOMOTIVE DISMANTLER AND PARTS RECYCLERS

[OAR Docket #06-1124]

RULEMAKING ACTION:
PERMANENT final adoption
RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees
765:25-1-3 [AMENDED]
765:25-1-4 [AMENDED]
765:25-1-5 [AMENDED]
765:25-1-6 [AMENDED]
Subchapter 3. Operation
765:25-3-1 [AMENDED]
765:25-3-4 [AMENDED]
Subchapter 5. Assessment of Fine or Denial, Suspension, or Revocation of License
765:25-5-1 [AMENDED]
765:25-5-2 [AMENDED]
AUTHORITY:
Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)(1)
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INCORPORATIONS BY REFERENCE:
n/a
ANALYSIS:
The adopted rule clarifies the definition of a dismantler's place of business, requires Department of Environmental Quality permit, acknowledges records may be kept on computer, and allows the assessment of fines.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:25-1-3. Place of business

(a) **Location.** Place of business means that place owned, leased, or rented, and regularly occupied by a person, firm, or corporation, licensed under the provisions of 47 O.S. Section 591.1 et seq., for the principal purpose of engaging in the business of an automotive dismantler and parts recycler, where the products for sale are displayed and offered for sale, and where the books and records required for the conduct of the business are maintained and kept. Place of business shall include the entire real property described in the legal description contained in the automotive dismantler's application for license, or in the absence of a legal description, all of the real property used for the business.

(b) **Requirements.**

(1) **Original license.** All original licenses for locations not previously licensed as an automotive dismantling and parts recycling business issued on and after November 1, 1986, will be subject to the following requirements:

(A) The applicant shall provide evidence that he/she has available through ownership, rental, or lease agreement, a place of business as defined in 47 O.S. Section 591.1 et seq., and as further stated in (a) of this section;

(B) That said place of business satisfies all local zoning, code, and land use requirements;

(C) That said place of business is equipped with an office, that at a minimum is capable of satisfying the intent of 47 O.S. Section 591.1 et seq., for serving as a place where the books and records required for the conduct of the business are maintained and kept;

(D) That said place of business is equipped with an operational telephone capable of sending and receiving calls through existing telephonic circuits;

(E) That said place of business is identified with a sign not less than three feet (3') by four feet (4') in size, which displays, at a minimum the name of the business clearly legible from the nearest roadway;

(F) That the proposed business is deemed by the Commission to be appropriate for the surrounding land use, in those instances where there are no local land use regulations, and that the proposed business would not be considered to be a private or public nuisance in the proposed location;

(G) That the proposed place of business is or will be properly screened where vehicles are to be stored or dismantled prior to opening the business, by natural object, plantings, opaque fences of a height not less than six feet (6') nor more than eight feet (8'), or other appropriate sightproofing, so as to screen, where possible, vehicles and parts stored outside of buildings from view from immediately adjacent property.

(2) **Prior license.** Dismantlers licensed prior to November 1, 1986, shall not be required to meet the provisions of (F) and (G) of paragraph (1) of this subsection.

765:25-1-4. Applicant

Every person, firm or corporation desiring to apply for an original license for the purpose of engaging in the business of an automotive dismantler and parts recycler shall apply in writing on a form to be prescribed by the Oklahoma Used Motor Vehicle and Parts Commission, which form shall include:

(1) the name of the applicant,

(2) the business name of the proposed business,

(3) the street address of the applicant's principal place of business,

(4) the type of business organization of the applicant whether a sole proprietorship, partnership, or corporation,

(5) the applicant and/or business organization's financial standing,

(6) the legal description of the proposed place of business, together with written verification from the appropriate local authorities that the place of business meets the licensing and zoning requirements of the municipality or county where located,

(7) sales tax permit number issued by the Oklahoma Tax Commission,

(8) authorization by the applicant for the Commission or its agent to inspect the register of purchases and sales of motor vehicles or parts thereof required to be kept by the applicant and authorization to inspect all vehicles or parts thereof on the register of purchases and sales wherever located and all vehicles or parts thereof located on applicant's property, ~~and~~

(9) storm water multi-sector general permit from the Department of Environmental Quality, and

(~~9~~10) such additional information as may be required by the Commission.

765:25-1-5. Issuance of license

(a) **Name.** An automotive dismantler's license will be issued in the legal name of the individual proprietorship, partnership, or corporation as identified on the application for dismantler license.

(b) **Certificate.** An automotive dismantler's license shall consist of a signed certificate bearing the official seal of the Commission, the name and address of the business, and shall bear a unique dismantler license number. Said license shall be posted in a conspicuous place in the dismantler's place or places of business. The automotive dismantler's license number will be prefixed with "AD", followed by a four digit number, then the current license year (AD-0000-~~90~~ 00).

765:25-1-6. Renewal of license

(a) **Term.** Every license issued to an automotive dismantler and parts recycler hereunder shall be valid only for the calendar year in which it is issued and shall be renewed on or before January 1st of each year.

(b) **Sales tax number.** All applications for renewal of license shall include the sales tax number issued to the applicant by the Oklahoma Tax Commission.

(c) **DEQ permit.** All applications for renewal of license shall include the authorization or permit number from the Department of Environmental Quality.

(~~c~~ d) **Renewal period.** Except as may otherwise be determined by the Commission licensees and Buyer Identification Card holders who do not renew on or before January 1st shall be required to meet all of the standards and requirements applicable to an original application for license in effect at that time, regardless of whether the standards and requirements when the applicant first licensed were more or less restrictive than current standards.

(~~d~~ e) **Date for submission.** A properly executed application for renewal of license, accompanied by the appropriate fee or fees, on forms supplied by the Commission, shall be submitted by December 1st, of each year. All licenses shall expire on December 31st of each year.

(~~e~~ f) **Requirements.** Effective on and after November 1, 1987, for a renewal application, the Commission in considering the continued eligibility of any licensee whose original license was issued on or after November 1, 1986, shall base its determinations on the following factors:

(1) whether the licensee has maintained substantial compliance with 47 O.S. Section 591.1 et.seq.

(A) Substantial compliance with 47 O.S. Section 591.2, paragraph 1, shall be determined from data supplied by the applicant in a sworn statement on a form supplied by the Commission that reports the number of vehicles acquired since approval of the prior license that have been or are being:

(i) dismantled for the purpose of selling the parts thereof,

(ii) held for resale as is, and

(iii) rebuilt for resale as roadworthy vehicles.

(A) From the information supplied for this item, the Commission shall determine whether the licensee's business is principally that of acquiring vehicles for the purpose of dismantling and selling the parts thereof.

(B) Substantial compliance with 47 O.S. Section 591.4, paragraph B shall be determined from any objections that may have been supplied by surrounding neighbors related to public or private nuisance complaints, and if requested by the Commission, evidence that the screening and/or fencing requirements are being met.

(2) whether the licensee has maintained substantial compliance with the regulations of this chapter.

SUBCHAPTER 3. OPERATION

765:25-3-1. Form required

A register of vehicles shall be on a form prescribed by the Commission or maintained as part of the computer records of the business and shall contain the date of purchase and/or sale of the motor vehicles, the make, model, year, style, vehicle identification number, and name and address of the purchaser or seller of the motor vehicle.

765:25-3-4. Other licenses

(a) **Not required.** An automotive dismantler and parts recycler need not obtain a separate license as:

(1) a scrap processor or junk dealer, where, as an end result of his business, he accumulates nonrecyclable hulks which must be disposed of, or

(2) an automobile dealer, automobile accessory dealer, automobile garage or shop, or a storage yard or garage, as a prerequisite to engaging in the business of a dismantler or recycler.

(b) **Required.** If the salvage vehicle is rebuilt by the dismantler and is retitled and tagged as a roadworthy vehicle and is offered for sale ~~to the public~~ as a used motor vehicle, the dismantler shall be operating as a used motor vehicle dealer and is subject to the licensing requirements and used motor vehicle dealer rules and regulations thereof.

SUBCHAPTER 5. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

765:25-5-1. Grounds

The Commission is authorized to refuse a license to any person, firm, or corporation who does not meet the requirements of the original license; to assess fines, to cancel the license of a licensee for willful failure to continue to meet the requirements of 47 O.S. Section 591.1 et seq.; and is authorized to refuse, cancel, or revoke a license upon a felony conviction being rendered for violation of a state or federal law involving theft or for violation of the Oklahoma Certificate of Title Law or similar laws of other states, by an applicant, a licensee, a partner of an applicant or licensee, or director or manager in the case of a corporate applicant or licensee.

765:25-5-2. Procedure

~~Before~~ If the Commission assesses a fine or cancels or revokes any license, the holder of such license shall be given notice and an opportunity to be heard in an individual proceeding in accordance with the procedures set out in 47 O.S. Section 591.1 et seq. or in these rules and regulations. ~~If the Commission denies any license, the applicant shall be given notice and opportunity to be heard according to provisions of 47 O.S. Sections 591.9 and 591.10.~~ Where there is a conflict between the applicable law and the Rules of this Commission, the applicable law shall prevail. Appeals from the decision of the Commission shall be governed by the Oklahoma Administrative Procedures Act.

[OAR Docket #06-1124; filed 5-26-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 30. BUYER'S IDENTIFICATION CARDS

[OAR Docket #06-1125]

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RULES:
Subchapter 3. Assessment of Fine or Denial, Suspension, or Revocation of Bid Card
765:30-3-1 [AMENDED]
765:30-3-2 [AMENDED]
Subchapter 7. Salvage Pools and Salvage Disposal Sales
765:30-7-2 [AMENDED]
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The adopted rule clarifies the grounds for sanctions against Buyers Identification Card holders including the assessment of fines.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 3. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF BID CARD

765:30-3-1. Grounds

(a) The BID card may be refused, cancelled, ~~or~~ revoked, or a fine assessed for the same reasons's a license under ~~this act~~ The Automotive Dismantler and Parts Recycler's Act may be refused, cancelled, ~~or~~ revoked, or a fine assessed. Any person whose BID card is refused, cancelled, ~~or~~ revoked, or has a fine assessed shall enjoy the same review and appeal procedures as a person whose license is refused, cancelled, ~~or~~ revoked, or is assessed a fine.

(b) The Commission is authorized to refuse to issue a BID card to any person, firm, or corporation who does not meet the requirements of 47 O.S. 591.1 et seq., or the requirements of these regulations; to cancel the BID card of any licensee for willful failure to continue to meet such requirements of ~~this act~~ The Automotive Dismantler and Parts Recycler's Act ; ~~and~~ is authorized to refuse, cancel, or revoke a BID card for a felony conviction for violation of a state or federal law involving theft or for violation of the Oklahoma Certificate of Title Law or similar laws of other states, by an applicant, a licensee, a partner for the applicant or licensee, or director or manager in the case of a corporate applicant or licensee; and is authorized to assess a fine for any violation of the Automotive Dismantler and Parts Recycler's Act.

765:30-3-2. Procedure

~~Before~~ If the Commission cancels or revokes a BID card or assesses a fine, the holder of such BID card shall be given notice and an opportunity to be heard in the manner as set out in ~~765:2-3-1 et seq~~ 47 O.S. Section 591.1 et seq. Or these rules and regulations. If the Commission denies a BID card, the applicant shall be given notice and an opportunity to be heard in accordance with the procedures in 47 O.S. Sections 591.9 and 591.10. Where there is a conflict between the applicable law and the Rules of this Commission, the applicable law shall prevail.

SUBCHAPTER 7. SALVAGE POOLS AND SALVAGE DISPOSAL SALES

765:30-7-2. Copies of BID cards

Bids at salvage pools or salvage disposal sales shall be verified as licensed dismantler bids by attaching a copy of the dismantler's BID card or identifying number to each bid sheet accepted for sale of salvage vehicles.

[OAR Docket #06-1125; filed 5-26-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 35. MANUFACTURED HOME DEALERS

[OAR Docket #06-1129]

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Subchapter 5. Operation
765:35-5-1 [AMENDED]

Subchapter 7. Assessment of Fine or Denial, Suspension, or Revocation of License
765:35-7-1 [AMENDED]
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ANALYSIS:
The adopted rule is being amended to modify the information required on sales documents and allow the Commission to assess fines.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 5. OPERATION

765:35-5-1. Forms required

(a) **Forms.** The following forms shall be required in the sale of a manufactured home by a manufactured home dealer:

(1) Sales contract, bill of sale or buyer's order,

(2) Written notice of thirty (30) day title-transfer requirement and receipt for delivery of certificate of title to buyer,

(3) Condition of sale:

(A) warranty, or

(B) service contract, or

(C) warranty disclaimer,

(4) Finance or security agreement, if applicable, and

(5) Consignment agreement, if applicable.

(b) **Approval.** All forms must be approved by the Commission. The content and forms to be used shall be filed ten (10) days prior to use, and if not rejected in ten (10) days from the filing date, the forms will be conditionally approved.

(c) **Standards.** The forms required shall contain substantially the following information:

(1) Sales contract, bill of sale, or buyer's order. The sales contract, bill of sale, or buyer's order shall state the names of the parties, the make, model, tag number and serial number of the manufactured home subject to the transaction, if available, a statement of the selling amount, a description of the manufactured home traded in, if any, and the consideration given therefore, and

(2) Title and tax transfer notice requirement. It shall be the duty of every person licensed to sell manufactured homes to advise each purchaser in writing about his title requirements and payment of any taxes due.

SUBCHAPTER 7. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

765:35-7-1. Grounds ~~for denial, suspension, or revocation~~

(a) The Commission may deny an application for a license, or revoke or suspend a license after it has been granted for any of the reasons listed in 47 O.S. Sections 584 (A)(1) through (6), (8), or (B) or for violation of any statute or regulation relating to the purchase, sale, display for sale, or transfer of a manufactured home.

(b) The Commission may in addition to any other sanction or penalty assessed, impose a fine as authorized by law.

[OAR Docket #06-1129; filed 5-26-06]

TITLE 765. O KLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 36. MANUFACTURED HOME MANUFACTURERS

[OAR Docket #06-1126]

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Oklahoma Used Motor Vehicle and Parts Commission
47 O.S. Section 582(E)(1)
75 O.S. Section 302(A)(1)
75 O.S. Section 307
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ANALYSIS:
The adopted rule is being amended to acknowledge the new statutory authority of the Commission to assess fines.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 7. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

765:36-7-1. Grounds for assessment of fines or denial, suspension, or revocation

(a) **Grounds.** The Commission may assess a fine or deny an application for a license, or revoke or suspend a license after it has been granted for any of the reasons listed in 47 O.S. Sections 584 (A)(1) through (5) or for violation of any statute or regulation relating to the sale or transfer of a manufactured home.

(b) **Rules violations.** In addition to the grounds set forth in subparagraph (a) above, it shall be grounds for assessment of fines or denial, revocation or suspension of a license if the manufacturer:

(1) Defrauds any dealer or retail buyer;

(2)Fails to perform under the terms of any written agreement with any dealer or retail buyer;

(3)Knowingly engages in false or misleading advertising;

(4) Being a manufactured home manufacturer or any representative acting on the manufacturer's behalf, who has:

(A) Without just cause has terminated or failed to renew a manufactured home sales agreement with any new manufactured home dealer. Just cause for termination may constitute any legitimate business reason and may be specifically set forth in the manufactured home sales agreement.

(B) Unfairly, without due regard to the equities of the dealer, and without just provocation, canceled, terminated or failed to renew a manufactured home sales agreement with any new manufactured home dealer;

(C) Induced, or has attempted to induce, by coercion, intimidation or discrimination, any dealer to involuntarily enter into any manufactured home sales agreement with such manufacturer, or any representative thereof, or to do any other act to a dealer which may be deemed a violation of the act, or the rules and regulations adopted or orders promulgated under authority of this act, by threatening to cancel or not renew a manufactured home sales agreement existing between two parties.

(D) Being a manufactured home manufacturer who fails to supply a new manufactured home dealer with a reasonable quantity of new manufactured homes, parts and accessories, in accordance with the manufactured home sales agreement. It shall not be deemed a violation of the act, if such failure is attributable to factors reasonably beyond the control of such manufacturer.

[OAR Docket #06-1126; filed 5-26-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 37. MANUFACTURED HOME INSTALLERS

[OAR Docket #06-1127]

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PERMANENT final adoption
RULES:
Subchapter 9. Assessment of Fine or Denial, Suspension, or Revocation of License [NEW]
765:37-9-1 [NEW]
765:37-9-2 [NEW]
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47 O.S. Section 582(E)(1)
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ANALYSIS:
The adopted rule is being amended to set forth the grounds for disciplinary action against a manufactured home installer and what sanctions are available.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 9. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

765:37-9-1. Grounds

(a) The Commission may deny an application for a license, or revoke or suspend a license after it has been granted for any of the reasons listed in 47 O.S. Sections 584 (A)(1) through (6), or for violation of any statute or regulation relating to the installation of a manufactured home.
(b) The Commission may in addition to any other sanction or penalty assessed, impose a fine as authorized by law.

765:37-9-2. Prohibition

A person whose license has been revoked shall not have a financial interest of any kind in a manufactured home installer's business, nor shall that person participate in any way, including in an advisory position, in the operation of a manufactured home installer's business.

[OAR Docket #06-1127; filed 5-26-06]

TITLE 765. OKLAHOMA USED MOTOR VEHICLE AND PARTS COMMISSION CHAPTER 38. MANUFACTURED HOME SALESPERSONS

[OAR Docket #06-1128]

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RULES:
Subchapter 1. Licensing Qualifications, Procedures and Fees [NEW]
765:38-1-1. [NEW]
765:38-1-2. [NEW]
765:38-1-3. [NEW]
765:38-1-4. [NEW]
765:38-1-5. [NEW]
765:38-1-6. [NEW]
Subchapter 3. Authority of Salespersons [NEW]
765:38-3-1. [NEW]
Subchapter 5. Assessment of Fine or Denial, Suspension, or Revocation of License [NEW]
765:38-5-1. [NEW]
765:38-5-2. [NEW]
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ANALYSIS:
The new rule is being enacted to require manufactured home salespersons to obtain a license, set forth the information required in applying for a license, the prerequisites for the issuance of the license, the authorization to act, the limitations of a salesperson, and the potential sanctions against applicants and licensees.
CONTACT PERSON:
John W. Maile, Executive Director (405)949-2626

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S. SECTION 308.1(A), WITH AN EFFECTIVE DATE OF JUNE 25, 2006:

SUBCHAPTER 1. LICENSING QUALIFICATIONS, PROCEDURES AND FEES

765:38-1-1. Purpose

The rules of this Chapter have been adopted for the purpose of complying with the provisions of 75 O.S. Section 250 et seq. and 47 O.S. Section 582 (E). This Chapter will provide a description of the qualifications for obtaining a manufactured home salesperson's license, authority of a salesperson, and the grounds and procedure for assessment of a fine or denial, suspension, or revocation of a manufactured home salesperson's license.

765:38-1-2. Fees

The fees required for an application or renewal of manufactured home salesperson's license are recited in 47 O.S. Section 583.

765:38-1-3. Applicant

(a) **Activities requiring license.** A manufactured home salesperson is anyone who has been engaged by a manufactured home dealer to buy, sell, exchange, negotiate or act as an agent for the purchase, sale or exchange of an interest in a manufactured home on behalf of the dealer for whom the salesperson is employed. A salesperson shall include anyone employed by the manufactured home dealer who is involved in any part of the sales process, including but not limited to the sales manager and finance and/or insurance manager.

(b) **Information required.** An applicant shall provide sufficient information on the application or otherwise to enable the Commission to determine whether the applicant should be granted a license. The information shall include:

(1) information relating to the applicant's business integrity, the applicant's experience in the same or similar businesses, and his business history,

(2) whether the applicant will devote full or part time to the business, and

(3) any other pertinent information consistent with the safeguarding of the public interest and welfare.

(c) **Application required.** Applications for license shall be verified by the oath or affirmation of the applicant and shall be on forms prescribed by the Commission and furnished to such applicants. The applications shall contain such information as the Commission deems necessary to enable it to fully determine the qualifications and eligibility of the applicant for the license applied for.

(d) **Activity not authorized.** A salesperson's license shall not authorize the person to refer a prospective customer or consumer to another manufactured home dealer and obtain compensation therefor without an employment relationship with the other manufactured home dealer.

765:38-1-4. Issuance of license

(a) **Prerequisite.** A license for a manufactured home salesperson will not be issued, renewed, or endorsed until the employing dealer is licensed and has certified that the applicant for said license is in his employ. Dealers' payrolls and other evidence will be checked to ascertain that all salespersons for such dealers are licensed. It is not intended that the dealer be required to pay for licenses for its salespersons. However, the dealer may do so on a reimbursable basis, or any other plan satisfactory to its dealership organization. All salespersons's licenses will be sent to the dealer for distribution to the respective applicants, and the dealer will determine that all its personnel required to obtain licenses have done so.

(b) **Permanent license.** A permanent salesperson's license shall be issued after approval of the applicant by the Commission. A salesperson's license shall consist of an identification card bearing the name, signature of the salesperson, social security number, name of employer, address, signature of the Executive Director, the dealer's license number prefixed with MH, (MH-0000). The card shall be carried upon his person at all times when acting as a manufactured home salesperson at licensee location.

765:38-1-5. Renewal of license

All licenses shall expire on the 31st day of December, following the date of issue and shall be nontransferable.

765:38-1-6. Changes

(a) **Employer.** If the salesperson changes employer, the licensee shall within thirty (30) days of employment by another manufactured home dealer, apply for a salesperson's license with the new employer. The salesperson shall surrender his salesperson's license upon termination of the employment relationship.

(b) **Notice.** The dealer will notify the Commission in writing when a salespersons's employment is terminated. The dealer may be liable for actions of the salesperson until proper notice is filed with the Commission.

SUBCHAPTER 3. AUTHORITY OF SALESPERSONS

765:38-3-1. Authority

(a) **Salesperson only.** A manufactured home salesperson's license shall permit the licensee to engage in the activities of a manufactured home salesperson. A salesperson's license does not entitle the licensee to perform as a dealer as defined in 47 O.S. Section 581. A manufactured home salesperson's license does not entitle a person to separately own manufactured homes for sale or any interest in the manufactured homes or dealer business without first qualifying as a partner, corporate member, or part owner of the dealership and meeting the qualifications of a dealer as prescribed in 47 O.S. Sections 581-583.

(b) **One card only.** A salesperson may not hold more than one manufactured home salesperson's license at any one time or be employed by or sell for any dealer other than the dealer and at the address designated on the salespersons's license, with the exception that the licensed dealer has more than one location. Then the licensed dealer and licensed salesperson may sell on each location properly licensed as additional locations.

(c) **Restrictions.** A salesperson's license shall not be issued for an individual who is not actively engaged in the activities of a manufactured home salesperson.

SUBCHAPTER 5. ASSESSMENT OF FINE OR DENIAL, SUSPENSION, OR REVOCATION OF LICENSE

765:38-5-1. Grounds

The Commission may deny an application for license, or suspend or revoke a license after it has been granted for any of the reasons listed in 47 O.S. Sections 584 (1) through (6); for violation of any statute or regulation relating to the purchase, sale, display for sale, or transfer of a manufactured home; or if it is determined that the license is being or has been issued for

the benefit of a person who would not or could not qualify for the license in his or her own right.

765:38-5-2. Prohibitions

A person whose license has been revoked or denied or whose license was surrendered in lieu of revocation or under circumstances such that said license could have been revoked, shall not have a financial interest of any kind in a manufactured home sales business, nor shall that person participate in any way, including in an advisory position, in the operation of a manufactured home sales business.

[OAR Docket #06-1128; filed 5-26-06]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 10. ADMINISTRATION AND SUPERVISION

[OAR Docket #06-1036]

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Subchapter 3. State Technical Assistance, Supervision, and Services
780:10-3-2 [AMENDED]
Subchapter 5. Finance
780:10-5-2 [AMENDED]
780:10-5-4 [AMENDED]
Subchapter 9. Service Contracts and Equipment Guidelines
780:10-9-1 [AMENDED]
780:10-9-2 [AMENDED]
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CONTACT PERSON:
Judy Draper, 405-743-5437

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. STATE TECHNICAL ASSISTANCE, SUPERVISION, AND SERVICES

780:10-3-2. Career guidance and counseling, career information, disability services, integrated academics, essential skills and career development

(a) **Career guidance to technology centers.** The Department shall provide coordination and leadership for career guidance and counseling to area technology centers, and other entities whose primary purpose is the delivery of career guidance and counseling. Technology center~~s~~ districts shall have an identifiable guidance program in place, implemented and administered by an adequate number of credentialed staff and coordinated by staff with experience in delivering or supervising student services that addresses the career development needs of all students. Technology centers shall provide all students with information and advisement about career and educational options, administer assessment instruments such as interest inventories, aptitude tests, and achievement tests or acquire the results of such assessments prior to enrollment to provide guidance in program selection and placement, and provide support for students to help them be successful in their career pathway.

(b) **Career Information.** The Department shall provide technical assistance to schools, institutions, and agencies for career development software and career information materials

(c) **Financial Aid Services.** The Department shall represent the Oklahoma career and technical education system by performing a liaison function with the Student Financial Aid Office (SFA) of the US Department of Education. As such, the Department will determine the in-service needs of technology center financial aid personnel and arrange for knowledgeable individuals, from SFA or other professional organizations, to conduct workshops and training sessions. The purpose of these in-service opportunities is to strengthen financial aid programs at technology centers ensuring adherence to current state and federal regulations governing the administration of financial aid programs. This operational unit shall collect all statistical data related to financial aid activities at technology centers and report this information where appropriate. This operational unit shall also administer the Oklahoma GI Bill program which provides tuition assistance to qualified Vietnam-era veterans.

(d) **Career Specialists.** Career Specialists shall provide on-site and in-service activities to local education agencies or technology centers to develop and/or implement career programs including career guidance, career information, career resource centers and assistance in use and implementation of materials and services provided by the Department to the local education agency or technology center. The local education agency or technology center shall request the assistance and shall designate a local career development liaison to coordinate the services to be delivered.

(e) **Disabilities services.** The Department shall coordinate and provide technical assistance to assure appropriate services and program accessibility for individuals with disabilities and other members of special populations in technology centers and in *Career*Tech programs in local education agencies.

(f) **Integrated academics and essential skills.** The Department shall coordinate developmental activities and provide technical assistance to technology centers and skills centers for education enhancement, career assessment, and employability skills development.

SUBCHAPTER 5. FINANCE

780:10-5-2. Audits

The Department shall require annual audits of all schools that are subrecipient of funding from this agency. O.S. 70-22-101 thru 113 cited as the "Oklahoma Public School Audit Law" provides specific guidance. The audit staff of the Oklahoma Department of Career and Technology Education will conduct follow-up reviews of school audits or conduct audits of ~~non-school~~ subrecipients as directed by the State Director. Audit reports which reflect Federal expenditures of ~~$300,000~~ $500,000 or more shall be in accordance with the provisions of OMB Circular A-133. Technology Centers governed by the State Board of Career and Technology Education shall adopt the general provisions of the Governmental Accounting Standards Board (GASB) Statement Number 34.

780:10-5-4. Program funding

(a) **Secondary and full-time adult programs in technology centers.**

(1) **Formula payments.** The State Board will fund a portion of the cost of programs and services in accordance with an approved technology center funding formula. The Department shall consider enrollment, number of school sites in the district, number of programs approved, transportation, availability of funds, and appropriate state and federal laws in developing the annual technology center funding budget.

(2) **Formula adjustment.** The failure of a program to meet minimum standards may result in an adjustment of the funding.

(b) **Secondary programs in comprehensive schools.**

(1) **Budgets.** The State Board will assist local districts in providing for excess costs of *Career*Tech programs. The Department shall prepare budgets to be approved annually based upon availability of funds and appropriate state and federal laws.

(2) **Program assistance monies.** All approved *Career*Tech programs shall receive the program assistance monies annually. These monies shall be used to support the additional costs of the *Career*Tech program including purchase of equipment, instructional supplies, and staff development.

(3) **Equipment matching funds.** New *Career*Tech programs will receive equipment matching funds in the first year of operation, if funding is available. If funding is available, equipment matching funds will be provided to existing programs.

(4) **Location of equipment.** Any program equipment purchased with state or federal funds shall remain in the program area for which it is intended.

(5) ***Career*Tech teacher contracts.** *Career*Tech teacher contracts shall be a minimum of 10 months and shall begin on or before August 1 of each year.

(6) **Teacher salary supplement.** The Department shall determine annually the amount to reimburse each school district to augment the salary of each teacher of a 10-month *Career*Tech program in a comprehensive school.

(7) **Additional salary.** In those programs where the instructor is employed and approved by the State Board beyond 10 calendar months, the additional salary will be calculated on the basis of 1/10 of the base salary as prescribed by the school district for an instructor of like qualifications employed on a 10-month basis. The career and technology instructor's summer pay is to be calculated on the local school base schedule (including increments and any flat raises provided by the legislature over and above the minimum salary and increments) for instructors of like qualifications.

(8) **Part-time programs.** In order to receive 100 percent funding, a program must be full-time. Any exceptions to the offering of a full-time program shall constitute a reduction in funding of 50 percent.

~~(c) **Local directors for comprehensive schools.**~~

~~(1) **Eligibility for funding.** A comprehensive school district employing 12 or more full-time, reimbursed *Career*Tech teachers shall be eligible for a local director of *Career*Tech education, and the maximum reimbursement shall be set by the State Board annually.~~

~~(2) **Duties and qualifications for local directors.**~~

~~(A) **Duties.** The Local Director shall, under the direction and supervision of the local school board and superintendent, be the principal administrative officer who is responsible for the *Career*Tech programs. He/she shall be responsible for the organization, curriculum, evaluation, and improvement of the *Career*Tech courses offered in the comprehensive school(s). The Local Director shall maintain close contact with business and industry, advisory committees, potential employers, and other agencies and institutions relative to employment needs and job opportunities in order that training may be closely coordinated with current needs and anticipated opportunities in the employment market. The Local Director shall evaluate programs continuously and bring about changes and improvements which shall assure that students will obtain the occupational skills and knowledge for which instruction is being provided. The Local Director may assume other responsibilities within the comprehensive school system but shall devote no less than 50 percent of~~

~~his/her time to the above responsibilities relating to Department funded *Career*Tech programs.~~

~~(B) **Qualifications.** The qualifications for the Local Director shall include at least three years experience in teaching, supervision, or administration of *Career*Tech program(s). All certification requirements appropriate for other teaching/administrative responsibilities shall be maintained as defined in the **Teacher Education and Certification Handbook** published by the State Department of Education. Initial selection and employment of the Local Director is subject to approval by the Department.~~

(~~d~~c) ~~**Applied Technology/Academic Education (ATAE).**~~ **TechConnect and TechConnect Plus.** Reimbursement for approved TechConnect and TechConnect Plus programs shall include incentive assistance and teacher salary supplement in the same manner as with other comprehensive school programs. The program assistance (state) funds are provided to meet the minimum program operation requirements. Federal career and technology (vocational) education funds and/or local funds may be used to meet the program operation recommendations.

(~~e~~d) **Business and Industry Services programs.** The Department shall reimburse Business and Industry Services programs based on the availability of funds and approved by the Business and Industry Services Division.

(~~f~~e) **Skills Centers programs.** The Department shall reimburse Skills Centers programs based on the availability of funds and approved by the Skills Centers Division.

(~~g~~f) **Postsecondary institutions-collegiate.** Funds shall be allocated to postsecondary institutions as set forth in agreements between the State Board and the Oklahoma State Regents for Higher Education or as mandated by P.L. 101-392.

(~~h~~g) **Apprenticeship.** Local education agencies conducting apprenticeship-related training programs shall qualify for reimbursement at a rate approved by the Department.

(~~i~~h) **Work-site learning.** Approved work-site learning programs shall meet the standards established by the Department. Reimbursement for these programs shall be based on availability of funds and approval by the Department.

(~~j~~i) **Program closures due to changes in funding.** The Oklahoma Department of Career and Technology Education may also recommend closure for secondary and postsecondary education programs based upon loss of funding, lack of funding, revenue shortfalls or other changes in funding. The rules dealing with probationary status and reevaluation shall not apply to a program being considered for closure based upon changes in funding. The State Board shall make the determination for program closure based on economic factors, vocational need, duplication of programs, school-to-work connection, student demand, student placement, student completion/ retention, and program standards and the decision of the Board shall be final.

SUBCHAPTER 9. SERVICE CONTRACTS AND EQUIPMENT GUIDELINES

780:10-9-1. Contracted services, boards, and commissions

(a) **Agreements and contracts.** The Department may enter into agreements and contracts with other agencies and entities as may be necessary or feasible for the furtherance of ~~and~~ career and technology education. Such contracts and agreements shall be in accordance with state and federal laws and internal agency rules and procedures.

~~(b) **Computer services; *Career*Tech teacher education.** The Department may contract with the Oklahoma Regents for Higher Education for systems design and computer telecommunications services, *Career*Tech teacher education, and such other functions as are necessary to carry out functions of the Department.~~

(~~e~~b) **Housing and other support.** The Department may, through contractual arrangements, provide housing and support services to other entities whose primary purpose is delivery of career and technology education (such as the Mid-America Vocational Curriculum Consortium).

~~(d) **Other services.** The Department may contract with other agencies as deemed appropriate and necessary by the State Director.~~

780:10-9-2. Equipment

(a) **State-owned equipment.**

(1) **Donated or purchased equipment.** Equipment donated to or purchased by the Department through reimbursement ~~with non-federal funds~~ shall be considered the property of the Department.

(2) **Special funding.** Equipment purchased through special funding, which require that the equipment be used in specific programs, shall be placed in those programs and shall be subject to appropriate state and federal laws, rules and regulations.

(3) **Maintenance.** The receiving institution shall be responsible for maintaining equipment supplied by the Department.

(4) **Closing program.** The Program Administrator of the training program shall notify the Department inventory personnel, in writing, when a program or class is to be terminated or completed.

(b) **Loaning of equipment.** Equipment purchased for use by the Business and Industry Development Division may be loaned to other eligible training sites. The equipment shall be subject to any restrictions and is subject to recall on notice by the Department when needed for industrial training.

(c) **Identification.**

(1) **Department Purchased.** All equipment purchased by the Department with a value of $500 or more shall be affixed with an appropriate tag.

(2) **Department Reimbursement.** All equipment purchased by local education agencies (LEA) and reimbursed by the Department with state funds and has a value of $2500 or more shall be affixed with an appropriate tag.

~~(3) **Specialty Programs.** All equipment purchased for Industry Training, Safety Training, and Existing Industry with a value of $500 or more shall be affixed with an appropriate tag.~~

~~(4) **Federal Funds.** All equipment purchased by local education agencies and reimbursed with federal funds with a value of $5000 or more shall be affixed with an appropriate tag.~~

(~~5~~3) **Inventory records.** The Department shall maintain inventory records on all tagged equipment. Identification tags will be assigned by the Department and sent to the local education agency or to the appropriate Department personnel to be affixed to the equipment.

(d) **Accountability.**

(1) **Tagged equipment.** Equipment to be inventoried annually will be mailed to Superintendent or their designee, by the Department, with a request to update the list and return within 60 days unless a physical inventory is conducted by Department inventory personnel

(2) **Non-tagged equipment.** The local education agency (LEA) is responsible for maintaining an accurate list of items that were reimbursed with state funds with a value of $500 to $2500.

(3) **Adjustments.** The Department, after review of requests, will make necessary adjustments to the inventory.

(e) **Disposal.** Schools requesting items to be removed due to lost, stolen, salvage, or surplus must submit an inventory adjustment form for approval. Department personnel will inspect and/or make recommendations on the request.

(f) **Transfer of Ownership.** In no case shall an equipment transfer be made without advanced approval from Department inventory personnel. The ownership of state-owned equipment ~~over five years of age~~ may be transferred upon approval of the ~~Department~~ Board and the State Purchasing Director to the local education agency (LEA) in possession of equipment unless said equipment is essential for operation of industry specific or new industry training programs. Department inventory personnel will provide requests to accept and notification of transfers.

(g) **Guidelines.** Equipment procedures and guidelines, and the inventory adjustment forms can be found on the Department Website and will be utilized to enforce these rules.

[OAR Docket #06-1036; filed 5-22-06]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 15. TECHNOLOGY CENTERS

[OAR Docket #06-1037]

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SUBCHAPTER 3. TECHNOLOGY CENTERS EDUCATION

780:15-3-2. Establishment of a technology center district; sites and buildings

(a) **Establishment.** A technology center district shall be established in accordance with the steps outlined in this section.

(b) **State Board study of proposed technology center district.**

(1) **Proposed district study.** The State Board, upon request of the public school(s) within a proposed district, board of county commissioners, or citizens within a proposed district, shall make a study of the proposed district in regard to the following factors:

(A) Size;
(B) Total population;
(C) Assessed valuation;
(D) Current school enrollments;
(E) Estimated secondary school enrollments;
(F) Estimated full-time adult enrollments;
(G) Other information pertinent to determining the feasibility of a technology center district.

(2) **Costs.** The study shall also include building and equipment costs, as well as estimated annual operating costs.

(3) **Sharing of study information.** The information compiled as a result of the study shall be shared with the local schools and/or county commissioners and other interested persons within the proposed technology center district.

(c) **State Board determination of technology center feasibility.**

(1) **Decision by State Board.** After a study of the proposed technology center district has been completed and reviewed by the interested and affected schools and/or county commissioners, a decision will be reached as to the course of action to be taken. The State Board shall finally determine if the proposed technology center district meets the criteria and requirements prescribed, if there is a need for the district, and if the operation of the district can be adequately funded.

(2) **Valuation of district; waivers.** A proposed technology center district shall have a minimum valuation of $100,000,000 after homestead exemptions. In situations involving low valuations and/or sparsely populated areas where this requirement is not feasible, the State Board, upon presentation of sufficient justification, may give special permission to waive the minimum criteria.

(d) **Presentation of resolutions.**

(1) **Resolutions signees.** If the State Board determines the proposed technology center district is feasible and needed, resolutions shall be presented to the State Board signed by:

(A) Local boards of education of districts desiring to become a part of a technology center district,

(B) A majority of the membership of a board of county commissioners, or

(C) A combination of (A) and (B) of this subsection where there exists a county and school districts outside that county desiring to become a part of the same technology center district.

(2) **Cooperation.** The State Board shall work with the area in order to establish a district that is feasible and will fit into its state plan.

(3) **Established school districts.** The State Board shall protect the attendance area of established technology centers and not approve any part of an existing technology center district for inclusion into a new area district unless that area cannot be served adequately by the existing technology center (Deannexation proceedings may have to be followed first.)

(e) **Technology center district formation election.**

(1) **Call for election.** The State Board shall call an election in each district submitting a resolution, or in each district within a county submitting the resolution, if a technology center district is found to be feasible and needed.

(2) **Election.** An election will be held in each independent and elementary school district, and/or entire county, having territory that would be included in the proposed technology center district, for the purpose of permitting electors of the district to vote on the question of whether the territory comprising the independent or elementary school district, and/or entire county, shall be included in the proposed technology center district.

(f) **Elections relative to the creation of new technology center district (general rules).** The rules of this subsection shall be used for conducting elections relative to the creation of at technology center district, electing the initial board of education, voting the initial operating levy, and for annexation of an independent or elementary school district to an existing technology center district.

(1) **Election date.** The State Board with advice and counsel of local boards of independent and elementary school districts and/or county commissioners shall designate the date on which an election shall be conducted.

(2) **Responsibilities of county election board; State Board.** The State Board shall cooperate with the county election board designated to conduct the election. The county election board shall receive notice from the State Board and shall conduct the elections in the school district at the time specified by the State Board. The State Board shall prepare the publication notice and submit it to at least one newspaper of general circulation in each county officially calling the election, stating the purpose of the election and listing the polling places in the county. The State Board shall assume the cost of such publication.

(3) **Forms.** All forms to be used in technology center district elections will be provided by the County Election Board.

(4) **Hours.** The polls for election shall be open from 7 a.m. until 7 p.m.

(5) **Certification of results.** The county election boards shall, when appropriate, certify to the local school boards the results of an election. The county election boards shall certify to the State Board, also, the results of any election pertaining to the creation of a new technology center district, the initial board of education election, and the initial operating levy election.

(6) **Costs of elections.** When holding the election for the creation of a technology center district, the election of the original board of education, and the election for the first operation levy, the cost for these elections will be borne by the State Board.

(7) **Annexation election costs.** Annexation election costs of individual independent and elementary school districts will be borne by the State Board.

(g) **Formation election results determination.**

(1) **Election results.** Results of the election for the formation of a technology center district shall be submitted to the State Board and each school district involved. If the results of the election satisfy the criteria for the formation of a technology center district, the State Board may declare the district formed.

(2) **Election results from resolutions from school districts.**

(A) **Inclusion in the proposed district.** The territory comprising an independent or elementary school district shall be included in the proposed technology center district if a majority of the electors who voted cast ballots in favor of the question.

(B) **Establishment after an unfavorable vote.** Notwithstanding an unfavorable vote in an independent or elementary school district(s), a technology center district may be established and the territory comprising other independent and elementary school districts in which the votes have been favorable may

be included in the technology center district, if criteria prescribed by the State Board can be met.

(i) **Study of election results.** The State Board shall study the results of the elections to determine if a sufficient number of the school districts voted in favor of becoming a part of a technology center district. If the area is deemed sufficient, the State Board shall form the district.

(ii) **Valuation; reconsideration of districts.** If the valuation of the area that voted in favor of the proposition is not sufficient to form the district, the State Board shall continue to work with the proposed area; and if the school districts that were opposed to becoming a part of the technology center district wish to vote again on the proposition, they may do so by presenting another resolution to the State Board.

(C) **District establishment suspension; second election.** If the criteria cannot be met because of unfavorable votes in one or more independent or elementary school districts, the State Board may hold establishment of the proposed technology center district in suspension for a period not to exceed one year, and in the meantime may, but no sooner than after ninety (90) days, at the request of the local board of education where the election failed, call another election on the same question.

(3) **Election results from resolutions by a majority of a board of commissioners.**

(A) **Voters.** The majority of the votes cast in the county shall determine whether the territory of the county becomes a part of a technology center district. The electors residing in any portion of a county that is already a part of an existing technology center district shall not be allowed to participate in this election.

(B) **Electors in adjoining county.** A local school district that has its main buildings within the county calling the election but has electors residing in an adjoining county should pass a resolution for that part and present it to the State Board, which shall call an election as provided in these rules and regulations.

(C) **Addition of adjoining county electors to the technology center district.** If the majority of the voting electors in the county vote to establish a technology center district, then that part of the local district located in the adjoining county shall become part of the new district, provided a majority of those voting cast ballots in the affirmative, and they shall be entitled to the rights and privileges and be subject to the assessments as are all other patrons in the district.

(D) **Second election.** If the election fails, the State Board may call another election in the county at the request of the county commissioners after a period of three months or 90 days has elapsed since the previous election.

(4) **Declaration; number designation.** Whenever there has been a compliance with these rules and regulations, the State Board may issue an order declaring the technology center district to be established and designating its number.

(5) **Validation period.** Results of school districts and/or counties that voted to become a part of a technology center district shall be held valid for a period of 12 months, or one year, to allow time for the passage of an operational mill levy election.

(6) **Branch campuses.** Branch campuses may be established by the technology center board of education to serve special needs or remote areas of the district. In the event the local board elects to pursue an additional campus or provide an ongoing occupational program at a site other than the main campus, prior approval must be granted by the State Board. Factors that will be used in determining approval will include, but not be limited to, student travel time to nearest available *Career*Tech programs, district valuation, student enumeration, and local industry needs. If the branch campus is able to provide a minimum of five full-time programs, then it may be recognized as an official satellite campus and will be eligible for additional funding under a formula approved by the State Board.

(h) **Zoning of the new technology center district.**

(1) **Advisement.** When the State Board forms a technology center district, it shall then divide the district into board districts with the advice and counsel of the local school districts.

(2) **Five board districts.** After consultation with the local school officials, the State Board will divide each technology center district into five numbered board districts of approximately equal population.

(i) **Election of members to the board of education of the new technology center district.**

(1) **Call to elect members.** When a technology center district is established, the State Board shall call, and the appropriate county election board(s) shall conduct an election to choose a board of education, which shall consist of five (5) members except as hereinafter provided, elected by all of the school district electors of the technology center district.

(2) **Composition of board.** Candidates for board district offices of the board shall be residents of the board district. Electors shall vote on all candidates in board elections.

(3) **Terms.** The newly elected board members will serve initial terms as follows:

(A) Office Number 1, Board District 1: One year
(B) Office Number 2, Board District 2: Two years
(C) Office Number 3, Board District 3: Three years
(D) Office Number 4, Board District 4: Four years
(E) Office Number 5, Board District 5: Five years

(4) **Cycle of elections; terms.** At the first regular school election, as prescribed by the state statutes, after the technology center district has become operative for one year, an election shall be held to fill the office that expires in one year. The terms of other offices shall expire in the sequence noted in the schedule above. After the initial terms of offices expire, each school board member shall be elected for a five-year term.

(5) **Notification and declaration of intent.** Each candidate shall file a written notification and declaration of intent to be a candidate for the board district in which he/she resides or as a candidate-at-large. The notification and declaration of intent shall be filed with the county election board within the time prescribed by the election board.

(6) **Seven-member board.** In the event the total area of five or more counties is involved, a seven (7) member board of education may be elected to serve the technology center district.

(7) **Seven-member terms.** When there are seven board members, they shall be elected in the same manner as board of education members of other technology center districts. The terms of office of members shall be staggered so that the term of office of only one member shall expire each year. Offices shall be numbered one through seven.

(8) **Relations with State Board.** Representatives of the State Board shall meet with the elected board and administer the oath of office, which shall be the same as for boards of independent school districts. The State Board shall provide guidance, direction, and technical assistance to the newly elected board members.

(j) **Operational tax levy election for a new technology center.**

(1) **Call for election.** As soon as practical, and when it can legally do so, after members of the board of education of a technology center district are first elected following the establishment of the district, the board of education shall call an election to vote on an operational tax levy for the district.

(2) **Educational plan.** The elected board of the technology center district shall make a study utilizing the services of the State Board and all other agencies that may be at its disposal to determine an educational plan for the district.

(3) **Tax levy; estimate of needs.** No technology center district shall begin operations until the electors have approved a tax levy as provided by Section 9B, Article 10, Oklahoma Constitution and 70 O.S. ~~Sup. 2000~~ 2001, § 14-108, as amended, and the county excise board has approved an "Estimate of Needs" for the district.

(4) **Second election.** If an election for an operational levy is held and the proposed levy fails to receive a majority of the votes cast, a second election will be held within 180 days after the original election for the purpose of voting again on an operational levy.

(5) **Dissolution of district; board.** The State Board has the authority to disband a newly formed technology center district, release the board of education of its obligations, and release all public school districts from any obligation in the new technology center district when an operational levy is rejected by the voters a second time. Disbanding or dissolving a newly created technology center district will be done only after consultation with the local school districts involved.

(6) **School planning.** After passage of a successful operational levy, the technology center board shall employ professional help, engage the services of an architect to plan buildings, and take such action as necessary to establish the technology center.

(k) **Selection of the technology center superintendent.**

(1) **Choice of superintendent.** Following passage of a successful operational tax levy, the local board of education shall employ a technology center district superintendent.

(2) **Duties; qualifications.** The duties and minimum qualifications of technology center superintendents shall be as follows:

(A) **Duties.** The technology center superintendent shall be the principal administrative officer of the technology center. He/she shall be responsible for the organization, curriculum development, evaluation, and improvement of the technology center program. The technology center superintendent shall maintain close contact with the employment services, advisory committees, potential employers, and all agencies and institutions relative to employment needs and job opportunities in order that training may be closely coordinated with current needs and anticipated opportunities in the employment market. He/she shall evaluate programs continuously and bring about changes and improvements ~~which~~ that will ensure that students will obtain the ~~occupational~~ skills and knowledge for which instruction is being provided. The technology center superintendent shall be responsible for maintaining a system of complete and accurate records and shall make such financial, statistical, and descriptive reports as may be required by the State Board.

(B) **Qualifications.** First, the technology center superintendent shall have a superintendent's certificate as defined ~~in the **Teacher Education, Certification and Assignment Handbook** published~~ by the State Department of Education. Second, the technology center superintendent shall have had at least five years of experience as a teacher, supervisor, or administrator of an approved *Career*Tech program. Third, the technology center superintendent shall hold a valid Oklahoma *Career*Tech teaching certificate. Persons having these three qualifications shall be issued a Standard Technology Center ~~Administrator~~ Administrator's Credential. A person who has a superintendent's certificate or a secondary principal's certificate, at least five years of experience as a teacher, supervisor, or administrator of an approved CareerTech program and has a valid Oklahoma CareerTech teaching certificate shall be issued a standard technology center administrator's credential.

(3) **Provisional technology center ~~administrator~~ administrator's credential.** A person with a superintendent's certificate or a secondary principal's certificate and at least five years of experience as a teacher, supervisor, or administrator of an approved CareerTech program

and without a valid Oklahoma *Career*Tech teaching certificate shall be issued a provisional technology center administrator's credential and be given three years from the date of issuance to complete the requirements for a standard technology center administrator's credential. A person who has been employed in an administrator, counselor or coordinator position for at least five years at a technology center, who has a superintendent's certificate or a secondary principal's certificate and a valid Oklahoma teaching certificate or valid school counseling certification shall be issued a provisional technology center administrator's credential and be given five years from the date of issuance to complete the eight semester hours specified below plus the appropriate ODCTE administrator development program(s) identified when the technology center administrator's credential is issued. The issuance of the technology center administrator's standard credential shall be based on the completion of a minimum of eight semester hours from three of the following areas:

(A) History and Philosophy of Career and Technology Education;

(B) Technology Center Finance;

(C) Curriculum for Career and Technology Education; and,

(D) Career and Technology Education Program Planning Development and Evaluation.

(4) **Issuance by the Technology Center Services Division.** The Technology Center Services Division of the Oklahoma Department of Career and Technology Education shall be responsible for the issuance of the technology center administrator's credential.

(5) **Technology Center ~~Administration~~ Administrator's Credential.** Other school administrators who are responsible for the evaluation of certified faculty under the provisions of the Education Improvement Act of 1985 shall also be required to have a standard or a provisional Technology Center ~~Administrator~~ Administrator's Credential as provided for above in 780:15-3-2(k)(2) & (3) of the rules and regulations governing technology centers. The technology center superintendent shall be responsible for assigning appropriate administrative personnel to evaluate the technology center's certified faculty and determining that such persons have a technology center ~~administrator~~ administrator's credential.

(l) **Other actions necessary to establish a new technology center.**

(1) **Funding for buildings and equipment.** The elected board may submit a building fund levy proposal or a capital outlay bond proposal to finance new buildings and equipment after a study has been made and professional help has been employed.

(2) **Election guidelines.** The building fund levy election or capital outlay bond election shall be conducted in accordance with the prescribed election rules and regulations.

(m) **State Board approval of site.** The location of a site for a technology center district building shall be approved by the State Board.

(n) **Approval of buildings.** All plans and specifications for technology center buildings, additions thereto and major modifications thereof that are designed to have career tech education programs and services shall be approved by the Local board and the technology center services division of the Oklahoma Department of Career and Technology Education.

(o) **Ownership of instructional equipment.** Instructional equipment purchased or reimbursed with state and/or federal funds will remain the property of the State Board except as provided in 780:10-9-2(d)(2). When a program can no longer be justified, the State Board may remove the equipment and transfer it to another technology center or place it in the equipment pool warehouse.

(p) **Insurance and equipment maintenance.** The technology center district shall be responsible for insurance and maintenance and repair of state-owned equipment while it is being utilized in training programs conducted by the district.

(q) **Architect involvement.** Technology center buildings that are to be remodeled, repaired, or constructed at a cost of greater than $40,000 shall have an architect engaged in the planning of such building as provided in 59 O.S. Supp. 1986, §46.3.

(r) **Accommodations for individuals with disabilities.** It shall be the responsibility of the board of education of a technology center district to follow the provisions of the Uniform Federal Accessibility Standards or the Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities when constructing new facilities or altering existing structures.

780:15-3-3. Elections in existing technology center districts

(a) **Election of five-year term board member.** A regular election shall be held in each technology center district as may be prescribed by law, at which time the technology center district electors shall elect a member of the board of education to succeed the outgoing member for a term of five years and, if necessary, elect a member of the board to fill any vacancy that occurred since the previous election.

(b) **Board vacancies.** Vacancies for members of the board of education of every technology center district shall be filled by appointment by the board. Persons appointed to fill vacancies in the first half of the term of office for the board position shall serve only until the next succeeding election, at which time the office which they hold shall be placed on the ballot for the balance of the unexpired term. Vacancies filled by appointment following the delivery of the resolution calling for regular elections to the secretary of the county election board shall be filled until the regular elections the following year~~;~~. Persons elected to fill unexpired terms shall begin those terms at the next regular meeting of the board of education following the election. ~~however, if~~ If the board of education does not fill the vacancy by appointment within sixty (60) days of the date the board declared the seat vacant, the board of education shall call a special election to fill the vacancy for the unexpired term.

(c) **Notification and declaration of candidacy.** Candidates for election as members of the board of education of an existing technology center district shall file a notification and declaration of candidacy with the county election board at the time specified by law.

(d) **Run-off election.** If no candidate receives more than 50 percent of the votes cast in the election, an election between the two candidates with the highest number of votes shall be conducted in accordance with 26 O.S. ~~Supp. 1992~~ 2001, §13A-103, as amended .

(e) **County election board.** All technology center elections shall be conducted by the county election board in accordance with 26 O.S. ~~Supp. 1988~~ 2001, §13A-101 et seq., as amended.

(f) **Notification of results.** The county election board shall notify the State Board and local school district boards of the results of the initial election of board members. Thereafter, the county election board shall notify the existing area school board of education of the election results.

(g) **Organization of the school board.** The school board of a technology center district shall be organized in accordance with 70 O.S. ~~Supp. 1992~~ 2001, §5-119, as amended, and the Rules for Career and Technology Education, Title 780 Oklahoma Administrative Code.

(h) **Responsibilities of the board.** The board of education of a technology center district shall have powers, duties, and obligations in accordance with 70 O.S. ~~Supp. 1992~~ 2001, §5-117, as amended. The board will perform all functions necessary for the administration of a technology center district in Oklahoma as specified in the Oklahoma School Code, and in addition thereto, those powers necessarily implied but not delegated by law to any other agency or official.

780:15-3-6. Technology center students

(a) **Student eligibility.**

(1) **High school students.** For students currently enrolled in high school, the technology center is an extension of the student's high school and shall be subject to the regulations thereof. The student's home high school shall transcript the units of instruction earned by high school students attending the technology center. High school students who successfully complete their ~~occupational~~ career plans of study shall be awarded a competency/completion certificate by the technology center. The technology center is a separate entity in that it also serves adult students.

(2) **Admission criteria and enrollment procedures.** High school students shall meet the admission criteria established by the technology center for the specific program of study in which they wish to enroll, regardless of lawful immigration status. All high school students shall be enrolled through a cooperative effort of the sending comprehensive high school and the technology center, except in cases where the student's parent or guardian has provided an affidavit and sufficient evidence that he/she is participating in a home-schooled education plan in accordance with 70 O.S. 1981, §10-105.

(3) **Approval to withdraw and withdrawal procedures.** Students who wish to withdraw from a technology center must have approval of both the technology center and the comprehensive high school. Specific procedures for withdrawal are established cooperatively by the technology center and the respective home high school.

(4) **Student discipline.** High school students' discipline and control shall be a cooperative effort between the comprehensive (home) high school and the technology center. Each institution shall enforce rules and regulations in accordance with their board-approved policies. Both institutions shall recognize the students' rights to "due process."

(A) **Qualified Students with Disabilities under IDEA.** Discipline for students with disabilities who have an IEP shall be in accordance with current federal and state legislation and rule of law.

(B) **Qualified Students with Disabilities under Section 504/ADA.** Qualified students with disabilities under Section 504 of the Rehabilitation Act of 1973 as amended or the Americans with Disabilities Act of 1990 as amended who are disabled by drug addiction or alcoholism may be disciplined to the same extent as other students. However, a student who is disabled by some other condition in addition to drug addiction or alcoholism must be evaluated and afforded due process prior to disciplinary action that would constitute a significant change in placement. Denial of access, and/or a significant change in placement, should not occur when there is a definable relationship between the misconduct and the disability. The student's 504/ADA team should meet and make this determination. There is no requirement in Section 504 or the ADA for the continuation of educational services following the expulsion of a student for behavior unrelated to the student's disability.

(5) **Certified coursework.** Units of coursework earned by a student in an approved technology center in Oklahoma shall be certified by the technology center to the sending high school in which the student is regularly enrolled. These units of coursework shall be counted toward meeting local and state requirements for graduation. The technology center is considered to be an extension of the sending school curriculum and shall be subject to the regulations thereof.

(6) **Hours of attendance.** High school students attending a technology center may spend one-half day pursuing a high school diploma or GED and one-half day completing a *Career*Tech program in the technology center. The students are counted as attending a full day at the home high school.

(7) **Secondary Students.** Secondary *Career*Tech programs in the technology centers may be offered to secondary students. Students who are on an Individualized Education Program may participate in the technology center program for up to four years.

(8) **Postsecondary/adult students.** The technology center functions as a separate postsecondary-level educational institution for adult students who are beyond the age of compulsory school attendance and/or are not enrolled in high school. Postsecondary/adult students

may attend full-time programs in the technology center or short-term classes held any time during the day on or off campus. Postsecondary/adult students are subject to the policies and procedures established for adult students by the technology center and shall be afforded all benefits and services for which they qualify, regardless of lawful immigration status. Units of coursework completed at a technology center by a postsecondary/adult student are transcripted by the technology center as postsecondary level credit. Postsecondary/adult students who successfully complete their occupational plan of study shall be awarded a competency/completion certification by the technology center. Units of instruction and/or credits earned by postsecondary/adult students may also be applied toward an associate degree, in accordance with the cooperative agreements and cooperative alliance agreements developed by each technology center.

(9) **Residency.** Students that meet the residency requirements of 70 O.S. Supp. 1996, Section 1-113, shall have the same opportunity to access technology center programs, regardless of lawful immigration status, as any other in-district student. These students may enroll in an appropriate program following the same admission and enrollment procedures as other students.

(10) **Cooperative Alliances.** Cooperative Alliances may be formed between technology centers and colleges or universities offering technical Associate of Applied Science (AAS) degrees. The decision to form a Cooperative Alliance by institutions will be voluntary and agreed upon by both partners. Each Alliance will be formally codified in a charter that commits the partner institutions to their respective responsibilities. The State Regents for Higher Education and the State Board of Career and Technology Education will review and approve the charter for each Cooperative Alliance. All programs that are currently approved in a cooperative agreement shall continue and be assumed as part of this Alliance agreement. The partner college will serve as the principal Oklahoma higher education partner with the Center. Other Institutions of higher education may submit a written proposal to offer college-level programs at the Center with the joint approval of the college and Technology Center in the Alliance. If the Institution and Center cannot agree, the written proposal may be sent to the Chancellor (OSRHE) and the State Director (ODCTE) to arbitrate. The Alliance will allow transferability of college credit by requiring that qualified high school students and adults be admitted to the partner Institution or another approved Alliance participating Institution, enroll in the college-credit courses, obtain the college credit upon course completion, and have an official college transcript. Students enrolled in these courses are encouraged but not required to take them for college credit.

(A) **Transfer matrix.** The college and technology center will participate in a state-wide transfer equivalency matrix maintained by OSRHE for all courses as required offered through the Alliance. The courses approved for college credit shall have a defined course syllabus, course objectives and industry standards. The courses shall be reviewed for equivalency and approved by the ODCTE staff.

(B) **High School Students.** High school juniors and seniors enrolled in an accredited high school and receiving high school level instruction at home or from an unaccredited high school may, if s/he meets the minimum requirements established by the Oklahoma State Regents for Higher Education, be admitted as a concurrent student to a college or university in The Oklahoma State System of Higher Education that offers technical AAS and certificate programs to enroll in technical courses only. High school students are also required to have a written statement from the student and parent/guardian indicating an understanding (1) of the eligibility for admission to the Institution and the Center, (2) of the guidelines and policies regarding the transcription of the Institution technical course on the Institution's official student transcript, and (3) of the industry requirements for certificate completion in the Center's program. Credit for the technical course will be granted by the high school for graduation and by the college for credit toward an AAS degree each semester while the student is enrolled in and successfully completing the course.

(C) **Postsecondary/Adult students.** College admission requirements for regular admissions to the Institutions listed in the Institution's "*Catalog*" shall apply to recent high school graduates and adults. Likewise, admission requirements to non-credit programs at the Technology Center are listed in the Center's student handbook and annual schedule.

(b) **Tuition.**

(1) **Resident high school students.** High school students who are residents of the technology center district attend on a tuition-free basis, regardless of lawful immigration status.

(2) **Tuition charge.** Technology centers are authorized to charge tuition to postsecondary students. Amounts charged by a technology center district for tuition are subject to the approval of the State Board.

(3) **Out of District Tuition.** Technology center districts shall charge tuition to any secondary student who does not reside in the technology center district. The fee for tuition shall be not less than twice the amount of the local cost of providing the program for the student. The State Board may waive this requirement in situations where the technology center district has shown evidence that such requirement will be detrimental to the mission of the local technology center district. Reciprocity agreements to benefit in-district students may be made between technology centers and approved by the Oklahoma Department of Career and Technology Education.

(c) **Transportation.**

(1) **Responsibility.** The technology center is responsible for providing transportation of daytime secondary students to and from in-district, sending schools for

those students who are enrolled in a three-period block of instruction. Transportation for students requesting alternative schedules or programs shall be determined by an agreement between the comprehensive school and the technology center.

(2) **Operation under Oklahoma school laws.** All technology centers owning or leasing and operating school buses that transport students to and from points being served by the technology center shall operate under the current school laws of Oklahoma.

(3) **Adult transportation.** Upon approval of the technology center board of education, postsecondary students enrolled in *Career*Tech programs may be transported, as space is available, on established bus routes and related auxiliary activities.

(d) **Student accounting.** Student Accounting information shall be submitted to the Information Management Division as outlined in OAC 780:10-7-2.

[OAR Docket #06-1037; filed 5-22-06]

TITLE 780. OKLAHOMA DEPARTMENT OF CAREER AND TECHNOLOGY EDUCATION CHAPTER 20. PROGRAMS AND SERVICES

[OAR Docket #06-1038]

RULEMAKING ACTION:
PERMANENT final adoption
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Subchapter 3. Secondary, Full-Time and Short-Term Adult *Career*Tech Programs 780:20-3-1 through 780:20-3-5 [AMENDED]
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State Board of Career and Technology Education; 70 O.S. 2001, §14-104, as amended; 75 O.S. 2001, §250 et. seq., as amended
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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. SECONDARY, FULL-TIME AND SHORT-TERM ADULT *CAREER*TECH PROGRAMS

780:20-3-1. Administration and supervision

(a) **Advisory committee.** Each full-time *Career*Tech program must have an occupational advisory committee that is formally organized and meets at least once annually. The membership of the advisory committee must be diversified with the majority of membership representative of occupations for which the program is training.

(b) **Civil rights compliance.** In order to receive federal funds, local administrators must comply with all civil rights procedures and prohibitions that include, but are not limited to, the following:

(1) **Annual public notification.** All recipients offering *Career*Tech programs shall, at the beginning of the school year, advise parents, employees, students, and the general public that all occupational opportunities will be offered without regard to race, color, national origin, sex, age, or disability.

(2) **Employment.** Recipients offering *Career*Tech programs shall not engage in any employment practice that discriminates on the basis of race, color, national origin, sex, age, or disability.

(3) **Accommodations for individuals with disabilities.** Students with disabilities shall be placed in the regular educational environment of any career and technology education program unless it can be demonstrated that the education of the individual with a disability, even with the use of support services, cannot be achieved satisfactorily.

(A) **Support services.** Support services include curriculum modification, equipment modification, classroom modification, supportive personnel, and instructional aids devices, and other services deemed necessary by the IEP team. Documentation shall exist as to the types of support services that were considered and reasons why they were rejected.

(B) **Individual needs.** When students with disabilities are enrolled in any career and technology education program, evidence must exist as to how the student's individual needs are being met.

(C) **Participation in and review of IEP.** A representative of the area technology center shall be on the IEP team when enrollment in a career and technology education program is considered to be an appropriate part of the student's IEP. Career and technology education instructors, whether teaching in an area

technology center or in a comprehensive school program, shall have access to a copy of the IEP before the identified student enters the program.

(D) **Accommodation plans.** Students who have provided appropriate documentation of a disability, who have been determined under Section 504 of the Rehabilitation Act or the Americans with Disabilities Act as a qualified individual with a disability in relation to the career and technology education program, and who require necessary accommodations in order to participate in and benefit from career and technology education will have an accommodation plan in place. This plan will be developed by a group of persons knowledgeable about the student, including the student, and will specify the agreed upon services necessary for the student to participate in and benefit from career and technology education.

(E) **Staff Development.** Regular staff development shall include instruction in maintaining confidentiality, modifying instruction, and reviewing and interpreting special needs documents.

(4) **Apprenticeship.** Agreements entered into for the provision or support of apprenticeship training shall not discriminate on the basis of race, color, national origin, sex, age, or disability, and should so state.

(5) **Comparable facilities.**

(A) **Facilities.** Changing rooms, showers, and other facilities provided for *Career*Tech students of one sex shall be comparable to those provided to *Career*Tech students of the other sex.

(B) **Nondiscrimination.** *Career*Tech facilities may not be located, constructed, modified, or renovated in a manner that creates, maintains, or increases student segregation on the basis of race, color, national origin, sex, age, or disability.

(6) **Financial assistance.** Financial assistance in the form of loans, grants, scholarships, special funds, subsidies, compensation for work, or prizes shall be provided to *Career*Tech students without regard to race, color, national origin, sex, age, or disability, except where necessary to overcome the effects of past discrimination.

(7) **Printed materials.** Counseling and other printed materials shall be provided to *Career*Tech students for program selection recruitment, career/employment selection, and promotional activities without regard to race, color, national origin, sex, age, or disability.

(8) **Work-site learning.**

(A) **Nondiscrimination.** Work-site learning opportunities shall be made available to *Career*Tech students without regard to race, color, national origin, sex, age, or disability.

(B) **Nondiscrimination on the job.** All written agreements between school and employer must contain an assurance from the employer that students will be accepted and assigned to jobs and otherwise treated without regard to race, color, national origin, sex, age, or disability.

(c) **Local administration supervision.** The school administration shall provide program supervision and coordinate the *Career*Tech program activities as an integral part of the overall educational program in the school.

(d) **Local teacher supervision.** Each *Career*Tech teacher shall be responsible for providing appropriate activities that will contribute to the development of each *Career*Tech student according to the student's occupational objective and for conducting and reporting student follow-up upon exit from or completion of the program.

(e) **Cooperative programs.**

(1) **Cooperative education.** The cooperative method of education is a joint effort between the school system and business and industry.

(2) **Supervision of students.** Schools offering cooperative *Career*Tech programs shall provide adequate time for teacher-coordinators to supervise and coordinate the activities of student learners. Adequate time shall be determined by applying the following formula:

(A) 0-25 cooperative students - 1 period (hour) per day

(B) 26-50 cooperative students - 2 consecutive periods (hours) per day

(3) **Exemption of planning period.** The one-hour planning period shall not be considered coordination time.

(4) **Responsibilities of the teacher-coordinator.**

(A) **Responsibilities.** The teacher-coordinator shall have the responsibility of coordinating classroom instruction, on-the-job activities or hands-on experience, and placement of students.

(B) **Training station visits.** The teacher-coordinator shall make a minimum of one (1) on-site visit per grading period to each training station employing cooperative *Career*Tech students. The purpose of these visits shall be to document and coordinate the learning experiences of the students. Training station visits shall be documented and put on file in the teacher's classroom.

(C) **Student files.** A "Memorandum of Training" and a training plan shall be on file for each cooperative student, and a copy shall be sent to the employer and parents.

(D) **Employer evaluation.** Each employer shall complete a written evaluation of the student's progress at least one time per grading period, and a copy of this evaluation shall be on file in the teacher's office. Employers are also required to have proof of age on file and a work permit if the employee is under 18 years of age.

(5) **Scholastic credit.**

(A) **Credit for on-the-job training/internship.** Additional units of credit may be added to the unit(s) earned in the classroom for being employed in an occupationally appropriate training station during the school year by applying the following:

(i) an average of 10 periods (hours) per week for a minimum of 30 weeks of on-the-job training

under the supervision of a teacher-coordinator = 1 unit;

(ii) an average of 20 periods (hours) per week for a minimum of 30 weeks on-the-job training under the supervision of a teacher-coordinator = 2 units;

(iii) in the case of block schedules, where a student completes the requirements for a unit of class work in one semester, a student could also earn an additional $\frac{1}{2}$ unit for 10 hours per week for 15 weeks of on-the-job training under the supervision of a teacher-coordinator, or

(iv) a student could earn an additional 1 unit for 20 hours per week for 15 weeks of on-the-job training under the supervision of a teacher-coordinator.

(v) Employers or their representatives shall complete a written evaluation of the cooperative students worksite performance for each grading period. The teacher is responsible for converting the employer's evaluation into the appropriate letter grade for the student's on-the-job grade. Not to be confused with the pass/fail or satisfactory/unsatisfactory grade sometimes given to students participating in a work release program.

(B) **Documentation of work hours.** Teachers must maintain, in the school files, documentation of the number of hours each cooperative student works.

(C) **Extra assignments.** If extenuating circumstances exist, and the student is not employed, the teacher must document extra assignments equal to one hour of classroom instruction per day for every hour under the required 10 hours per week of employment.

(D) **School release time.** A student who is employed in accordance to 5(A) above and is receiving credit for a supervised cooperative work experience may be released up to two hours per day from the normal six-hour school day.

(E) **Classroom credit only.** If the teacher cannot document extra assignments and/or hours worked, the student shall receive only credit for the classroom activities.

(f) **Records and reports.** Each local education agency or eligible recipient shall submit student accounting and other required reports on the specified due date.

(g) **Maintenance of confidential records.** Each technology center shall develop and implement a local policy regarding the confidentiality of all personally identifiable information and education records. This policy shall meet the requirements of the Individuals with Disabilities Act (IDEA) CFR 300.560-300.574 and the Family Educational Rights and Privacy Act (FERPA) 34 CFR 99.1-99.67 concerning collection, storage, disclosure, and destruction of confidential student records.

(h) **Career practicum.** A career practicum is defined as a planned program of worksite learning experiences that are relevant to the student's career major, coordinated with the academic/school-based curriculum, and includes work-site mentoring. Units for a career practicum may be granted when the following guidelines are met:

(1) The career practicum shall:

(A) be based upon a student's plan of study or career pathway

(B) be based on a written plan of identified progressive work site experiences or work processes which are coordinated with the academic/school-based curriculum.

(C) require regular contact through work-site visits and other communication, and

(D) measure progress made toward the attainment of identified career practicum competencies.

(2) A school site contact must hold a secondary license/certificate to coordinate the career practicum.

(3) Every student participating in a career practicum shall be assigned a trained, work site mentor. Mentors will be oriented to the purpose and goals of the career practicum, will facilitate the attainment of competencies, will be responsible for evaluating the student's performance, and will consult with the school site coordinator and employer.

(4) The career practicum shall conform to applicable safety, child labor, labor standards, and equity laws.

(5) A career practicum agreement will be developed which outlines the responsibilities of the student, school site coordinator, parent/guardian, mentor and employer.

(6) A student must be 16 years of age and enrolled in grade eleven or twelve.

(7) One unit may be granted for the career practicum when all of the above guidelines are met, and the student is involved in a work site learning experience an average of 10 hours per week during the school year or the student is involved in a work site learning experience a minimum of 300 hours during the school year.

(8) Not more than two (2) units earned may be granted for a career practicum and applied toward high school graduation. Units may be granted for work site learning experiences as part of a career practicum in an accredited summer high school program.

(i) Career guidance and counseling for secondary and full time programs. Technology centers shall have an identifiable guidance program in place that addresses the career development needs of all students. Technology centers shall provide all students with information and advisement about career and educational options, administer assessment instruments such as interest inventories, aptitude tests, and achievement tests or acquire the results of such assessments prior to enrollment to provide guidance in program selection and placement, and provide support for students to help them be successful in their career pathway. This includes but is not limited to:

(1) All students in accredited program have developed, updated, and on file, an individual career plan for assessment, guidance, program placement and other services to be provided for maximized program success and employability.

(2) All students are enrolled or placed in a technology center program on the basis of their documented interest

and ability to benefit from training, work history, IEP provisions, accommodation plans, and/or their plans of study developed at the sending school or in cooperation with other agencies.

(3) The technology center guidance staff coordinates all services with guidance and counseling staff from sending schools, higher education institutions and other agencies through regularly planned informational meetings and/or correspondence.

(4) Counselors shall be appropriately certified and credentialed for the grade levels to which they are assigned. School counselors shall hold a valid Oklahoma School Counselor Certificate appropriate to grade levels to which they are assigned. (State accreditation standards: 210:35-9-45) The title of counselor should only be applied to those staff with appropriate certifications and/or credentialing.

780:20-3-2. Programs: admissions, operations, enrollment, and length

(a) **Nondiscrimination; admission guidelines.** Students shall be provided access to *Career*Tech programs and facilities without regard to race, color, national origin, sex, or disability.

(1) **Agricultural Education.** Agricultural Education programs are designed for junior high and high school students (grades 8 through 12) and adults. Secondary students must have a supervised agricultural experience project. Each ODCTE funded agricultural education program shall be provided transportation services, by the local school district, for all agricultural education/FFA (FFA is an integral part of the agricultural education program) program related duties and activities.

(2) **Business and Information Technology Education.** Business and Information Technology Education programs are designed to prepare high school students (grades 8 through 12) and adults for pathways to careers in business and information technology.

(3) **Family and Consumer Sciences Education.**

(A) **Family and Consumer Sciences Education in comprehensive schools.** Family and Consumer Sciences programs are designed for junior high and high school students (grades 6 through 12).

(B) **Family and Consumer Sciences Occupational Education.** Occupational Family and Consumer Sciences programs are designed for high school students (grades 11 and 12) and/or adults to train or retrain in a specific family and consumer sciences related occupation.

(4) **Health ~~Occupations~~ Careers Education.**

(A) **CareerTech health ~~occupations~~ careers.** Health ~~Occupations~~ Careers Education programs are designed to prepare junior high students, high school students ~~(grades 9 through 12)~~ and adults for employment in a health ~~occupation~~ career of their choice.

(B) **Requirements for applicants.** Applicants for admission to Health ~~Occupations~~ Careers Education programs must meet requirements as set by the individual program, state statutes, and any other requirements of the appropriate licensing or accrediting agency.

(5) **Marketing Education.** Marketing Management and Entrepreneurship Education programs are designed to prepare students (grades ~~9~~ 8 through 12) and adults for career clusters in marketing, business management and entrepreneurship. Students may also earn additional units by participating in a supervised on-the-job internship.

(6) **Technology Education/TechConnect.** Technology Education programs are designed for students in grades 5 through 10 who desire an opportunity to explore and experience technological occupations.

(7) **Trade and Industrial Education/TechConnect Plus.** Trade and Industrial Education programs in comprehensive schools are designed for students in grades 10 through 12. TechConnect Plus programs are designed for 11th and 12th grade students when access to advanced career and technology programs are not available or special needs are identified. Schools must apply with the appropriate division for approval of a TechConnect Plus program. Trade and Industrial Education programs in technology centers are designed for students in grades 11 and 12 and/or adults. In technology center programs, tenth-grade students, or over-age students in a grade lower than the eleventh, may be enrolled upon approval of the sending school.

(b) **Program operations.**

(1) **Recommendation for program approval.** The appropriate *Career*Tech program administrator shall recommend approval of a program when criteria for the approval of new programs are met and funds are available.

(2) **Program composition.** Programs shall offer hands-on experience or supervised occupational experiences in the laboratory or clinical setting as well as classroom instruction to provide opportunities for students to achieve career objectives.

(3) **Course titles.** *Career*Tech course offerings must be in agreement with the course titles listed in the current ***Standards for Accreditation of Oklahoma Schools***, published by the State Department of Education. These same course titles (or abbreviated titles) should be the class titles entered on the student's transcript.

(4) **Units of credit.** The units of credit shall be determined by the number of periods the student is in class plus on-the-job training, clinical training, or internship served. (Refer to the ***Standards for Accreditation of Oklahoma Schools***.)

(5) **Full-time programs.** A full-time program in a comprehensive school shall consist of five *Career*Tech instruction class periods and one planning period for a six-period day, and six *Career*Tech instruction class periods and one planning period for a seven-period day. Exceptions to this rule shall include the following:

(A) **Two planning periods.** Teachers who supervise students' agricultural experience programs shall have a minimum of two periods to plan, supervise, and coordinate the activities of student learners (see

780:20-3-1(e) and 780:20-3-2(b)(7)(A)). It is recommended that the last hour of the school day be utilized as one of the planning periods. Schools offering Agricultural Education courses the final period of the day must provide a written explanation to the program administrator.

(B) **Teaching of related courses.** Teachers of Marketing Management and Entrepreneurship Education, Technology Education, TechConnect, Individualized Cooperative Education (ICE), and TechConnect Plus may be allowed to teach one related course, subject to the approval of the appropriate program administrator.

(C) **Trade and Industrial Education/TechConnect Plus.** Two three-hour block courses shall constitute a full-time program in Trade and Industrial Education in a Technology Center. Three two-hour block courses or six one-hour block courses or any combination thereof shall constitute a full-time program in a TechConnect Plus program in a seven period day at a comprehensive school.

(D) **Marketing Education.** Teachers of Marketing Management and Entrepreneurship Education may be allowed to teach one related course (if the school is on a standard six- or seven-period teaching day), subject to the approval of the Marketing Education program administrator.

(E) **Health ~~Occupations~~ Careers Education.** Teachers of Health ~~Occupations~~ Careers may be allowed to teach one or two related courses with at least one conference period (if the school is on the standard six or seven-period teaching day), subject to the approval of the Health ~~Occupations~~ Careers Education program Administrator.

(6) **Adult Training and Development.** Adult Training and Development (short-term adult) programs in comprehensive schools may be organized under the supervision of the *Career*Tech teacher and must be occupationally specific. These programs are organized on request or as the need indicates. They may vary in length.

(7) **Program operations by occupational division.**

(A) **Agricultural Education.**

(i) **Secondary programs.** The agricultural education instructor is a full-time, 12-month employee and shall teach only approved agricultural education courses. Agricultural education instructor shall have no other extra curricular duties or responsibilities other than those required through the FFA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved.

(ii) **Summer program.** The agricultural education instructor shall formulate a summer program of work and a calendar of activities, which are to be submitted to the local education agency at the completion of the school year.

(iii) **Activities.** Summer activities shall include supervision of students' activities; educational field days and tours; in-service and professional development activities; and, working with adults, agricultural organizations, and industries.

(iv) **Summer leave.** Agricultural Education teachers are entitled to two weeks of summer leave. In lieu of these two weeks of vacation, three weeks each year may be allowed for professional improvement. Summer leave should be coordinated with the local administration. If there is a question in regard to summer leave, the program administrator should be contacted for approval.

(v) **Full-time adult programs.** Full-time adult Agricultural Business Management programs vary in length and are designated for and intended to meet the needs of adults engaged in agriculture and agricultural business operations.

(B) **Business and Information Technology Education.**

(i) **Methods of delivery.** The Business and Information Technology Education programs provide three methods of delivery:

(I) Business and Information Technology Education internships in the comprehensive school shall consist of one or two block periods of classroom instruction and supervised work-site training through part-time employment in training-specific positions in business for students in grades 11 or 12.

(II) Business and Information Technology Education courses in the comprehensive school shall consist of one or two block periods of instruction offered in grades 9 through 12. Instructors shall teach only approved business and information technology education courses. Nine week and semester rotation courses are not approved for Business and Information Technology Education programs. Business and Information Technology Education instructors shall have no other extra curricular duties or responsibilities other than those required through the BPA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved.

(III) Business and Information Technology Education programs in technology centers shall consist of three-hour block periods of classroom instruction for students in grades 11 or 12 and should include a work-site learning component. Any exceptions must be approved in writing by the Program Administrator of Business and Information Technology Education.

(ii) **Course levels.** Comprehensive school Business and Information Technology Education programs shall not mix levels of courses in the same period without written permission from the State Department of Education.

(iii) **Technology/equipment.** Business and Information Technology Education programs shall provide technology that is appropriate for the defined occupational objectives and is reflective of a modern business environment. A written plan integrating curriculum, training materials, and technology shall be maintained to guide program development and maintain relevance to the marketplace.

(C) **Family and Consumer Sciences Education in comprehensive schools.**

(i) **Full-time programs.** A full-time program shall consist of at least three levels of family and consumer sciences classes with one or more conference periods in the daily schedule, and the instructor shall teach only approved family and consumer sciences courses. Family and consumer sciences instructors shall have no other extra curricular duties or responsibilities other than those required through the FCCLA student organization and normal school supervisory duties. Coaching, administration, or other similar full-time duties will not be approved.

(ii) **Part-time programs.** Programs that are less than full-time will be funded as a half-time program and will be approved only through permission of the program administrator. A part-time program shall include a minimum of two family and consumer sciences classes and a conference period for a six period day and three family and consumer sciences classes and a conference period for a seven period day.

(iii) **Course coordination.** Comprehensive school Family and Consumer Sciences Education programs shall not mix levels of courses in the same class period without written permission from the State Department of Education. This written permission does not ensure programs are meeting Oklahoma Department of Career and Technology Education standards.

(iv) **Adult programs for Family and Consumer Sciences Education.**

(I) **Adult Training and Development.** The Family and Consumer Sciences Education Division staff shall authorize Family and Consumer Sciences Education programs to include instruction for out-of-school and adult groups to be conducted as Adult Training and Development (short-term adult) programs.

(II) **Local organization of courses.** Adult training and development classes may be organized under the supervision and control of the local board of education and are designed for persons 16 years of age and older who are not enrolled in regular day school classes.

(D) **Family and Consumer Sciences Occupational Education.**

(i) **Full-time occupational programs in comprehensive schools.** A full-time family and consumer sciences related occupational education program in the comprehensive school will include two or more classes, two to three periods in length for 11th- and 12th-grade students.

(ii) **Full-time occupational programs in technology centers.** A full-time family and consumer sciences related occupational education program in a technology center will include two classes, three periods in length for 11th- and 12th-grade students and adults.

(iii) **Length; order.** Two years of occupational training may be offered. No student shall be enrolled in Occupational Training II until Occupational Training I has been successfully completed.

(E) **Health ~~Occupations~~ Careers Education.**

(i) **Secondary programs.** Programs in 7th, 8th, and 9th grade or ~~comprehensive~~ high schools vary in length and may be offered in one, two or three blocks of time. ~~At the 9th–12th grade level~~. Secondary programs in technology centers may be one or two academic years in length and vary in hours per day.

(ii) **Full-time adult programs.** Full-time adult programs vary in length in accordance with accrediting bodies.

(F) **Marketing Education.**

(i) **Secondary programs.** The three basic methods of offering secondary Marketing Management and Entrepreneurship Education programs shall be as follows:

(I) Project class, providing classroom instruction and application only;

(II) Project with shadowing component, providing a combination of classroom instruction and participating in a shadowing experience with business; and,

(III) Cooperative method/internship, providing classroom instruction plus a supervised work-site learning experience in a cooperating business.

(ii) **First- and second-year students.** Comprehensive school Marketing Management and Entrepreneurship Education programs shall not mix first-and second-year marketing management students in the same class without written permission from the State Department of Education.

(iii) **Technology/equipment.** Marketing Education programs shall provide technology that is appropriate for the defined occupational objectives and is reflective of a modern business environment.

(G) **Technology Education/TechConnect.**

(i) **Program operation requirements.**

(I) **Program design.** The primary purpose of the Technology Education/TechConnect is a career and technology education program designed to transition ninth and tenth grade students to the next level of career development. These programs provide foundational competency experiences by focusing on integration of rigorous academics, all aspects of the industry, employability and technical skills. Technology Education/TechConnect_programs are targeted for grades 9 and 10, but they may be extended an additional two years through an 11th and 12th grade TechConnect Plus program where access to advanced *Career*Tech programs is unavailable and/or limited or where special student needs are identified. Enrollment priority should be considered for students who are at-risk or who are members of special populations; however, enrollment should not be limited to these students only. Through the infusion of *Career*Tech preparation strategies in academic classes, Technology Education/TechConnect students develop an understanding of how principles of math, science, and English are applied in the workplace and why it is necessary for them to master academic skills. Technology Education/TechConnect programs are designed to provide students a solid foundation in academic skills, practical "hands-on" activities, and the ability to relate abstract concepts to the "hands-on" activities. An essential component of an Technology Education/TechConnect program is the development and implementation of a comprehensive career guidance program, so Technology Education/TechConnect students will be able to make more meaningful career choices by developing a better understanding of their own interests, skills, and abilities; understanding labor market projections; and learning to formulate a plan of study to achieve their individual career goals. The school guidance program should include a total occupational assessment of each student as well as components that address the student's personal, social, educational and career development needs. Technology Education/TechConnect programs shall consist of occupational instruction for one or more periods. Programs shall have laboratory experiences, where appropriate, to provide the progressive situations necessary for general occupational skills training. In order to integrate academics and *Career*Tech education, teachers of the Technology Education/TechConnect programs shall participate in appropriate professional improvement activities including the summer *Career*Tech conference, professional improvement meetings, and other related activities. Technology Education/TechConnect students shall have access to appropriate career and technology student organizations that are consistent with the related *Career*Tech programs as well as other personal development components. Technology Education/TechConnect program enrollment numbers shall be consistent with related *Career*Tech program guidelines with particular attention given to work situations and available resources. Technology Education/TechConnect teacher certification shall be consistent with related *Career*Tech program areas. Exceptions shall be approved by the appropriate occupational division administrator.

(II) **Occupational preparation.** Programs shall be designed to introduce students to careers in "clusters" of closely related occupations, including but not limited to Construction, Mechanical-Construction, Mechanics, Electrical/Electronics, Communications, Horticulture, Food Services, Hospitality, Child/Elder Care, Health Services, Metals, Food Services, Agricultural Related, Business, and Family and Consumer Sciences Related.

(III) **Full-time program.** The offering of at least two classes, which are each two consecutive periods in length or four one-hour periods in length, in a six period day shall be considered a full-time Technology Education/TechConnect *Career*Tech program. One two-period block or less than four one-hour period block will constitute a half-time program in a six period day. A seven period day will require three two hour blocks or four one hour blocks with an hour of related instruction for a full time program.

(IV) **Full-time teacher.** A teacher who is teaching two or more Technology Education/TechConnect classes, which are each two consecutive periods in length, or who is teaching four or more Technology Education/TechConnect classes, which are each one period in length, shall be considered as a full-time *Career*Tech teacher in a six period day. A Technology Education/TechConnect teacher may be assigned three two period or six one period *Career*Tech classes in a seven period day.

(V) **Technology Education/TechConnect program operation recommendations.** Technology Education/TechConnect students should have access to comprehensive guidance services. These services should include the development of a plan of study that provides direction through course enrollment leading toward high school graduation. The plan should be flexible with periodic review to ensure program/course relevance in attainment of the student's career goal(s). Schools should

offer applied academic courses in English, mathematics, and science for Technology Education/TechConnect students. Enrollment in applied courses should be consistent with each Technology Education/TechConnect student plan of study. Enrollment in the Technology Education/TechConnect applied academic courses should not be limited to Technology Education/TechConnect students. Teachers of the applied academic courses should participate in appropriate professional improvement activities including summer *Career*Tech conference, professional improvement meetings, and other related activities. Technology Education/TechConnect students should be provided support services to enhance academic competence. These services may be provided through an education enhancement center, tutoring services, or other activities that will assist the student in attainment of academic/occupational competencies.

(ii) **Supervision.** The State Board shall provide state and federal funds to enhance special populations students equal access and full participation in *Career*Tech programs. Programs shall be supervised by the appropriate occupational and Technology Education division.

(H) **Technology Education.**

(i) **Course duration.** Each technology education course shall be taught in a one-period block of time (45-55 minutes).

(ii) **Curriculum.** The curriculum shall include ~~five~~ the following technology systems: construction, communications, manufacturing, and transportation, and bio-tech ~~to include the sixteen cluster areas.~~ Through these systems, all sixteen of the nationally recognized Career Clusters will be covered.

(iii) **Four periods per day.** Each program shall implement the technology education curriculum into a minimum of four periods per day, with one additional period allotted for a conference/planning period.

(iv) **Equipment.** Technology Education programs shall provide technically up-to-date equipment to allow students opportunities for modernistic hands-on experiences. Schools are encouraged to use state program assistance funds to purchase this equipment.

(I) **Trade and Industrial Education ~~Technology Center~~.** All secondary trade and industrial education students in Technology Centers shall be enrolled for three consecutive periods daily, five days a week. ~~All secondary~~ Secondary TechConnect Plus students in comprehensive high schools may ~~shall~~ be enrolled for ~~two consecutive periods~~ one period daily, five days a week. Adult trade and industrial education students may enroll for one-half day (three periods) or a full day (six periods). The Program Administrator of Trade and Industrial Education must approve any exceptions in writing.

(J) **Integrated Academics.** Academics taught in the technology center shall be delivered in the context of the program in which each student is enrolled. If academic instruction is offered for credit through the sending school, it shall be structured so as to meet current legislation and State Department of Education guidelines. Students must meet, within the structure of the academic class, the attendance requirements of their comprehensive schools in order to receive academic credit. Further, the legislated limit of 10 days of absence from the academic class for school-related activities applies.

(c) **Enrollment for full-time programs.**

(1) **Guidelines compliance.** Program enrollments shall comply with the established guidelines of the appropriate occupational division. Exceptions must have written approval by the appropriate program administrator prior to the second week of class. Consideration shall be given to the availability of work stations, clinical experiences and individual student needs.

(2) **Enrollments specific to occupational divisions and programs.**

(A) **Agricultural Education.**

(i) **Student enrollment limits.** If a department has adequate space, equipment, and laboratory sites, a maximum of 25 students may be enrolled in each agricultural education class with the exception of lab classes, such as Horticulture and Ag Mechanics, and they shall be limited to 15 per class. Exceptions to these numbers must have written approval by the appropriate program administrator.

(ii) **Maximum class enrollment.** The maximum enrollment in each agricultural mechanics and horticulture class shall be 15 students per class period.

(iii) **Course prerequisite.** Agricultural Science I is the prerequisite for all other agricultural education courses with the exception of eighth-grade Agricultural Orientation.

(iv) **Employment in Agribusiness.** The Agricultural Education course, Employment in Agribusiness, is considered a Cooperative Program in which students can earn scholastic credit if the course meets all requirements listed under section (780:20-3-1 section e). It must be taught and supervised by the agricultural education instructor. Note: The work-site experience must be directly related to the curriculum offered in the program.

(B) **Business and Information Technology Education.**

(i) **Business and Information Technology Education programs in comprehensive schools.** A maximum of 25 students per class shall be enrolled in the business and computer technology

internship. Other Business and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student.

(ii) **Business and computer technology programs in technology centers.** Business and Information Technology Education courses may enroll a maximum of 25 students at a ratio of one work station per student.

(C) **Family and Consumer Sciences Education.**

(i) **Family and Consumer Sciences programs in comprehensive schools.** If a department has adequate space, equipment and laboratory sites, maximum enrollment for the following courses shall be: (Not all class offerings are listed, but those not listed have enrollment determinatives in common with one of the courses listed.)

(I) Personal Development, Teen Ecology, and Life Management-20 students

(II) Family and Consumer Sciences I and II-20 students

(III) Healthy Life Choices-25 students

(IV) Hospitality Careers Orientation, Career Orientation, and Adult and Family Living-25 students

(V) In-depth semester courses and/or Family and Consumer Sciences III and IV-25 students

(ii) **Family and Consumer Sciences Occupational Education.** A minimum of 10 and a maximum of 20 students shall be enrolled in each section of family and consumer sciences related occupational education.

(D) **Health ~~Occupations~~ Careers Education**

(i) **Secondary health ~~occupations~~ careers programs.** A minimum of 10 and a maximum of 18 students shall be enrolled in each section of a secondary health ~~occupations~~ careers education program.

(ii) **Full-time adult health ~~occupations~~ careers programs.** A minimum of 8 and a maximum of 12 students per instructor shall be enrolled in a full-time adult Health ~~Occupations~~ Careers Education program, or the limit set by national accrediting agencies. Program enrollment may also be limited by clinical site and availability.

(E) **Marketing Education.**

(i) **Student enrollment limits.** The maximum number of cooperative students in a full-time cooperative Marketing Management and Entrepreneurship program shall not exceed 50 students per marketing management teacher-coordinator. A maximum of 50 students per class may be enrolled in the marketing internship. Other Marketing Education courses may enroll a maximum of 25 students.

(ii) **Project class enrollment.** Where the marketing management teacher-coordinator teaches a marketing management project class in conjunction with the cooperative programs, enrollment in the project class is determined by the size of the classroom facility and SDE policies.

(iii) **"Marketing management project students. "** Sophomore, junior or senior students may be allowed to enroll in each existing cooperative class for the theory and classroom application portion only. These students would not be required to obtain work-site learning experience and would receive only one unit of credit.

(iv) **Half-time program enrollment.** The maximum number of cooperative students in a half-time cooperative program is 25 per teacher-coordinator.

(F) **Technology Education and TechConect.** The maximum enrollment for each period of Technology Education shall be 24 students. The maximum enrollment for each period of TechConnect shall be 20 students. Consideration should be given to the size of the facility and the number of students that the modular workstations are designed to accommodate.

(G) **Trade and Industrial Education and TechConnect.**

(i) **Maximum enrollment.** The maximum enrollment for each Trade and Industrial Education, TechConnect Plus program section shall be 20 students, with the exceptions of cosmetology, which may have a maximum of 22 students, and ICE programs, which may have 50 students per ICE teacher.

(ii) **Alternate program enrollment.** The Trade and Industrial Education Division shall establish a reduced maximum enrollment for any program not meeting adequate size or layout of teaching facilities, number of training stations, appropriate quality and quantity of tools, and equipment and supplies. Individual student needs, student safety and supervision shall also be considered when determining maximum student enrollment.

(iii) **Inclusion of on-the-job students.** Students involved in on-the-job training shall be included in the maximum enrollment for the program unless each school has an on-the-job training coordinator.

(d) **Length of programs.** *Career*Tech programs shall be 10 or 12 calendar months as approved by the appropriate program administrator. Exceptions must be approved by the Department.

780:20-3-3. Materials and facilities

(a) **Approved materials.** *Career*Tech teachers in all *Career*Tech programs shall use instructional materials developed by the Department or materials approved by the appropriate program administrator.

(b) **Equipment.**

(1) **Responsibility.** The local education agency is responsible for providing equipment and supplies to support the *Career*Tech program in order to assure quality training. Equipment must meet or exceed all appropriate safety standards.

(2) **Modern equipment.** Equipment shall be indicative of that currently used in business and industry and in conformity with modern technology.

(3) **Maintenance; replacement.** A policy for maintenance and replacement shall be developed by the local education agency.

~~(4) **State-reimbursed equipment.** All state-reimbursed equipment must be state-tagged and located in the proper classroom or laboratory for use by the students.~~

~~(5) **Consultation before selection.** The program administrator shall be consulted before the equipment is selected for acquisition.~~

(~~6~~4) **Inventory of state-owned equipment.** It is the responsibility of the local education agency to provide appropriate maintenance and repair of state-owned equipment and to maintain an accurate ~~inventory~~ accountability of state-owned equipment tagged in accordance with rule 780:10-9-2 (c).

(c) **Facilities.**

(1) ***Career*Tech programs facilities.** The local education agency shall provide *Career*Tech programs with facilities to assure safe and orderly, quality instruction to meet each program's objectives. The guidelines used shall be from the Oklahoma Department of Education "Planning for Education: Space Guidelines for Planning /Educational Facilities" booklet 70 O.S. 3-104. The appropriate program administrator shall be consulted regarding plans for new and remodeled facilities.

(2) **Health ~~Occupations~~ Careers Education.** Clinical facilities shall be adequate in number and quality to provide the experiences necessary for an effective program and must meet the requirements of the respective accrediting agency.

(3) **Marketing Education.** The local education agency shall provide an office with telephone within or accessible to the marketing management classroom.

780:20-3-4. Instructors

(a) **Certification on file.** All *Career*Tech secondary teachers shall have (on file in the local education agency) an appropriate teaching certificate issued by the Certification Section of the State Department of Education.

(b) **Administrative responsibility.** It shall be the responsibility of school administration to assure that a *Career*Tech teacher applicant meets *Career*Tech certification requirements before placing the applicant under contract. Certification requirements are found in the ***Teacher Education and Certification Handbook*** (Oklahoma State Department of Education).

(1) **Occupational division approval.** All *Career*Tech teachers must have the *Career*Tech certification application approved by the program administrator in the appropriate occupational division.

(2) **Occupational division renewal of certification.** All *Career*Tech teachers must complete the specific occupational division's requirements for *Career*Tech certification renewal and be approved by the appropriate program administrator.

(c) **Health ~~Occupations~~ Careers Education.**

(1) **Faculty requirements.** Faculty shall hold current credentials in the appropriate health field and must meet the requirements of the local education agency, Health ~~Occupations~~ Careers Education Division, and the respective accrediting agency.

(2) **Degree-seeking faculty.** Faculty with less than a baccalaureate degree shall have a degree plan on file and provide documentation of progress toward obtaining a degree.

(3) **On-file applications.** Faculty shall have an application on file in the Health ~~Occupations~~ Careers Education office, including a Statement of Qualifications form, all current transcripts and, if appropriate, teaching certificate or application for teaching certificate.

(d) **Professional development.** New instructors shall participate in preservice professional development activities as required by the appropriate divisions. All secondary and full-time adult *Career*Tech instructors and staff shall participate in professional inservice as required by the appropriate divisions, including summer conference and mid-year activities.

780:20-3-5. Career and Technology Student Organizations

(a) **Student organizations as an integral part of the *Career*Tech program.** The Oklahoma Department of Career and Technology Education is the responsible entity for governance and administration of the career and technology student organizations and therefore has the authority to develop and enforce policy of the student organizations consistent with *Career*Tech program design and operation. Each secondary *Career*Tech program shall have an active and appropriate student organization as an integral part of its program.

(b) **Membership in appropriate organization.** Each student who participates in student organization activities shall be a member of the student organization designed for the occupational program in which the student is enrolled.

(c) **Organizations.** Career and technology student organizations shall include:

(1) DECA/Delta Epsilon Chi (Marketing Education)

(2) BPA (Business and Information Technology Education), Business Professionals of America.

(3) FFA (Agricultural Education)

(4) FCCLA (Family and Consumer Sciences Education), Family, Career and Community Leaders of America

(5) HOSA (Health ~~Occupations~~ Careers Education), ~~Health Occupations Students of America~~

(6) TSA (Technology Education), Technology Students Association

(7) SkillsUSA (Trade and Industrial Education)

(d) **Accountability; loss of program funding.**

(1) The school and the career and technology student organization chapter will be held accountable for the actions of the student organization members and the advisor participating in any career and technology student organization activity. Failure to comply with the official rules of such activities may, after an opportunity to present reasons why said action should not occur, result in the loss of the state funding for that *Career*Tech program.

(2) The school and the FFA chapter will be held accountable for the actions of the FFA members and the FFA advisor participating in any FFA activity. Any Agricultural Education program that has a student/FFA member who is the owner of an animal testing positive for illegal or improper drugs or additives, has altered the appearance of the animal(s) surgically (other than normal and customary practice), and/or violates the eligibility rules for ownership of animals shall, after hearing, and after consideration by the State Board, and upon determination that there has been a violation of this policy, lose state funding for that program.

[OAR Docket #06-1038; filed 5-22-06]

Executive Orders

As required by 75 O.S., Sections 255 and 256, Executive Orders issued by the Governor of Oklahoma are published in both the *Oklahoma Register* and the *Oklahoma Administrative Code*. Executive Orders are codified in Title 1 of the *Oklahoma Administrative Code.*

Pursuant to 75 O.S., Section 256(B)(3), "Executive Orders of previous gubernatorial administrations shall terminate ninety (90) calendar days following the inauguration of the next Governor unless otherwise terminated or continued during that time by Executive Order."

TITLE 1. EXECUTIVE ORDERS

1:2006-12.

EXECUTIVE ORDER 2006-12

To the Honorable Members of the House of Representatives and

the Honorable Members of the State Senate of Oklahoma:

I, Brad Henry, Governor of the State of Oklahoma, pursuant to the authority vested in me by the provisions of Section 7 Article VI of the Oklahoma Constitution, hereby convoke the Second Extraordinary Session of the Fiftieth Oklahoma Legislature to convene at the State Capitol at 3:00 p.m. on May 25, 2006.

I recommend for consideration of the Legislature the following subject:

Budget matters, including revenue, tax relief, appropriations and other fiscal matters.

Copies of this Executive Order shall be distributed to every member of the Oklahoma House of Representatives, every member of the Oklahoma State Senate, the Clerk of the House of Representatives, the Secretary of the Senate, and the Director of the Office of State Finance.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 25 day of May, 2006.

BY THE GOVERNOR OF THE
STATE OF OKLAHOMA

Brad Henry

ATTEST:
Michelle Waddell
Acting Assistant Secretary of State

[OAR Docket #06-1104; filed 5-25-06]

1:2006-13.

EXECUTIVE ORDER 2006-13

I, Brad Henry, Governor of the State of Oklahoma, hereby direct the appropriate steps be taken to fly all American and Oklahoma flags on State property at half-staff from 8:00 a.m. until 5:00 p.m. on Friday, May 26, 2006, to honor Judge Donald D. Powers, who died on Monday, May 22, 2006.

Judge Powers served the 23rd Judicial District in Lincoln and Pottawatomie Counties for 28 years. He served as the first presiding judge over the Multi-County Grand Jury for the State of Oklahoma. He was a native of Tyron, Oklahoma, graduated from Central State College and received his law degree from the OU College of Law. During World War II, he was a navigator on the B-24 serving in the 15th Air Force in Italy and flew 51 combat missions, receiving the Air Medal with four oak leaf clusters and the Distinguished Flying Cross. He served in the Korean War with the 160th field artillery of the 45th Infantry Division and was discharged as a Captain. He began his law practice in Chandler and was appointed County Attorney. Returning from the Korean War, Judge Powers served in Washington DC as Congressional Secretary for Congressman Tom Steed until being elected District Judge. He was the recipient of the Silver Beaver Award by the Will Rogers Boy Scout Council. He served as Lion's Club President, American Legion Commander, Oklahoma Boys State staff member, Central State University Alumni Association President and Central State University Foundation Chairman. He was honored by the Bar Association with the Judicial Excellence Award for his outstanding service to the state and legal communities.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented by all appropriate agencies of state government.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 25 day of May, 2006.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:
Michelle Waddell
Acting Assistant Secretary of State

[OAR Docket #06-1153; filed 5-26-06]

1:2006-14.

EXECUTIVE ORDER 2006-14

I, Brad Henry, Governor of the State of Oklahoma, in observation of Memorial Day, hereby direct the appropriate steps be taken to fly the American and Oklahoma flags at the State Capitol Building at half-staff from 8:00 a.m. until 5:00 p.m. on Monday, May 29, 2006, to honor those Americans who gave their lives for the freedom we enjoy today.

This executive order shall be forwarded to the Director of Central Services who shall cause the provisions of this order to be implemented at the State Capitol Building.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Oklahoma to be affixed at Oklahoma City, Oklahoma, this 26th day of May 2006.

BY THE GOVERNOR OF THE STATE OF OKLAHOMA

Brad Henry

ATTEST:

[OAR Docket #06-1156; filed 5-30-06]